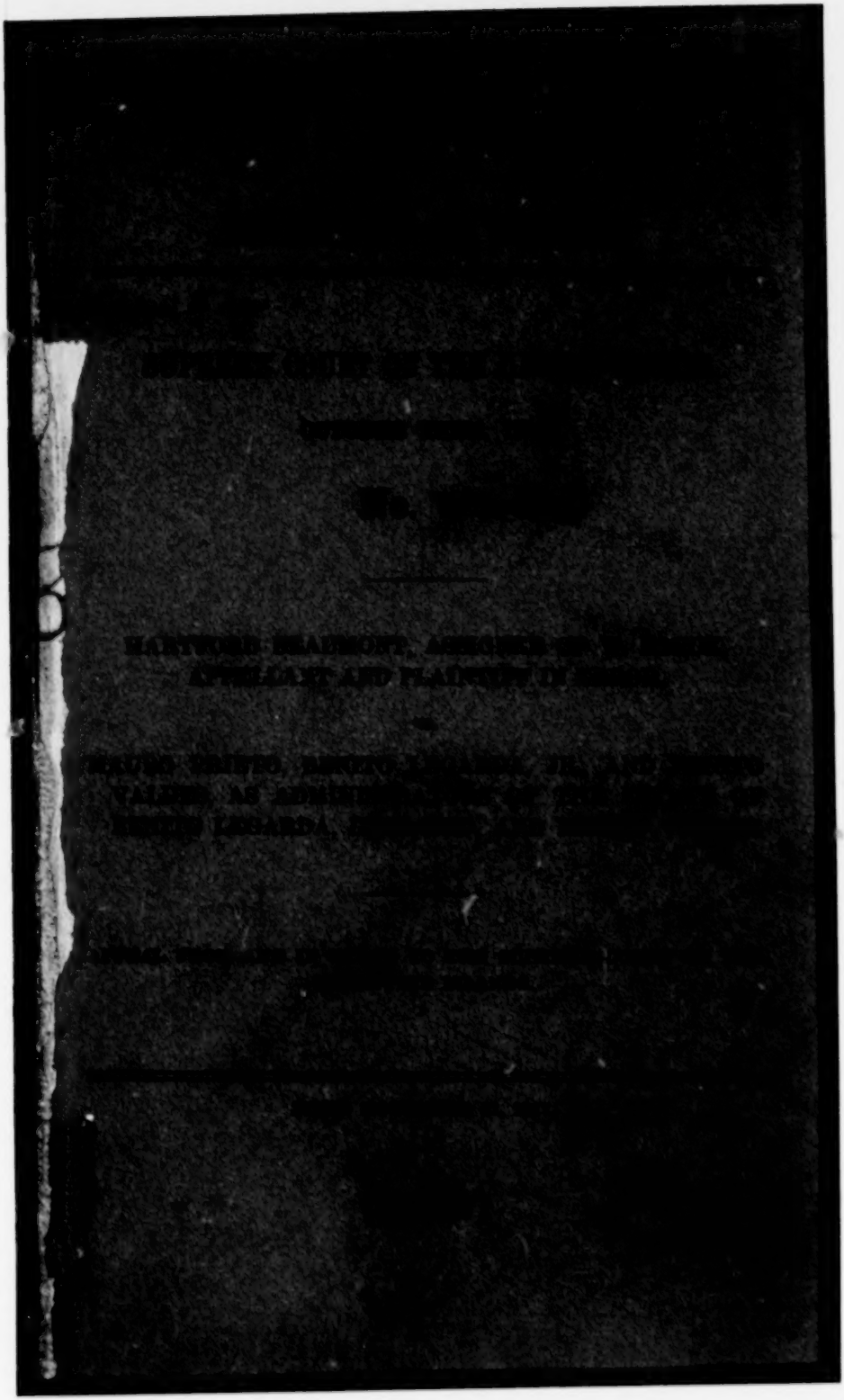

(26,237)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 770.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, APPELLANT AND PLAINTIFF IN ERROR,

vs.

MAURO PRIETO, BENITO LEGARDA, JR., AND BENITO VALDES, AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES.

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

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a R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Part I.

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA and BENITO VALDES, Defendants.

Bill of Exceptions of the Defendant Benito Legarda.

Be it known by these presents that in the Court of First Instance for the City of Manila, Branch II, the following proceedings were had on the dates hereinbelow mentioned.

I.

That on March 13, 1912, the party plaintiff filed the following complaint:

(Heading and Title.)

Now comes the plaintiff in the above-entitled case and to the Court alleges his cause of action as follows:

2 1. That plaintiff is a resident of the City of Manila, Philippine Islands;

2. That the defendant Benito Legarda is the absolute owner and in fee simple of the Nagtahan Hacienda (Estate) which shall be described hereinafter more exactly, and that he has his legal residence in the City of Manila, though temporarily he is in the United States;

3. That the defendant Benito Valdes is the attorney-in-fact of the defendant Benito Legarda and that at all times mentioned in

this complaint he has been acting by virtue of a power of attorney granted before a notary and filed in the office of the Registrar of Deeds and exhibited in other public offices of the City of Manila as such power of attorney, copy of which is hereto attached and marked Exhibit "A";

4. That on or about the 4th of December, 1911, the defendant Benito Valdes gave the plaintiff a document signed by him by which the said defendant Valdes promised to give and gave the plaintiff an option for the purchase of the Nagtahan Estate, property of the defendant Legarda, hereinafter described, at its assessed valuation, with the only condition that the right of option be exercised within three months from its date, to wit: on or before the fourth of March in the year of our Lord, one thousand nine hundred twelve;

5. That subsequently, to wit, on January 19, A. D. one thousand nine hundred twelve and while the offer of option was still in force, the plaintiff accepted in writing said offer in accordance with therein contained, and requested permission of the defendant Valdes
3 to examine the title deeds of the property, and also offered to pay defendant Valdes immediately and in cash the stipulated amount agreed upon in the contract for the sale of the said Hacienda, just as soon as a reasonable examination of the title deeds and other documents of the property could be made;

6. That the Nagtahan Hacienda is a property well known in the City of Manila, being registered with such name in the Court of Land Registration in which office its registration is better known as Record Case No. 2724, Decree No. 2471. The description of same by metes and bounds are hereto attached and marked as Exhibits "B" and "C;"

7. That said Hacienda contains an area of one million nine hundred ninety three thousand six hundred thirty one and eighteen hundredths (1,993,631.18) square meters, approximately, the value of which is very great, to wit, a value of not less than one million pesos (₱1,000,000.00), Philippine currency; though its assessed valuation as fixed by the Government at the time of the aforementioned option was only about ₱306,954.00, Philippine currency, and at present, due to certain expropriations of the land for street purposes, its assessed valuation is only about ₱240,000.00, Philippine currency;

8. That a great part of said property is let by the defendants to tenants who pay ten per cent (10%) or more of the assessed valuation of the land as yearly rents; so that the income from the rents of the said property is more than twenty-five thousand pesos (₱25,000.00), Philippine currency, every year;
4 9. That in spite of frequent requests, the defendants have wilfully refused and still refuse to deliver to the plaintiff the title deeds and other documents relating to the property nor any of them, and wilfully refuse to execute any document of transfer of the property to the plaintiff;

10. That for the omission and refusal of defendant Valdes to sell

the said property, which refusal is due to instructions given by defendant Legarda, the plaintiff has been damaged in the amount seven hundred sixty thousand pesos (₱760,000.00), Philippine currency;

11. That for the delay, omission and refusal of the defendant in fulfilling his obligation, the plaintiff has been compelled to pay heavy expenses, to suffer great losses, and through this means has been damaged in the amount of eighty thousand pesos (₱80,000.00), Philippine currency;

12. That plaintiff is ready and has been ready at all times to comply with the obligation imposed upon him, that is, to pay the defendants in cash the whole purchase price agreed upon.

Wherefore, plaintiff prays that judgment be rendered against the defendants and each of them, as follows:

1. That the said defendant Legarda be ordered and required to sell in fee simple unto the plaintiff, through a good and sufficient instrument, the aforementioned Nagtahan Hacienda with the description above given, and also to pay plaintiff the sum of eighty thousand pesos (₱80,000.00) as damages suffered by him for the de-
5 lay, omission and refusal of the said defendant to comply with the terms of the agreement.

2. That the defendants and each of them be ordered and required to render accounts to the plaintiff of all the rents and profits that they may receive on account of the property from the 19th of January, A. D. one thousand nine hundred twelve, until the date of the execution of the judgment in this case, with interest at the legal rate.

3. That in case the specific performance of the contract should be impossible the defendants pay to plaintiff damages to the amount of seven hundred sixty thousand pesos (₱760,000.00), Philippine currency.

4. That plaintiff have and recover interest and costs in this case.

5. That during the pendency of this case the defendants and all those who act in their name or stead or any of them be enjoined from selling, letting, alienating or creating any incumbrance upon the said Nagtahan Hacienda or any part thereof in any way, to the damage of the plaintiff.

6. That plaintiff have any other just and equitable remedy the Court may determine.

(Sgd.) HARTFORD BEAUMONT,
Attorney for the Plaintiff.

(Sgd.) W. BORCK,
Plaintiff.

Sworn and subscribed before me this 9th day of March, 1912, by W. Borck, affiant having exhibited to me his cedula No.
6 28257, issued in Manila on March 16, 1911.

((Sgd.) HARTFORD BEAUMONT,
Notary Public.

My commission expires December 31, 1912.

Reg. 386, Page 77.

7 EXHIBIT "A."

Power of Attorney.

Know All Men by These Presents:

That I, Don Benito Legarda y Tuason, of legal age, property owner, widower and resident of this City of Manila, Philippine Islands, hereby give and bestow a general power of attorney, ample and sufficient as by law may be required and deemed necessary, upon Don Benito Legarda y de la Paz, Don Mauro Prieto y Gorricho, and Don Benito Valdes, all three of legal age, married, merchants the first two named and physician the last mentioned, all of them residents of this capital city, that in my name and representation and exercising my rights and actions, severally or jointly and indiscriminately any of them, may execute and perform the following acts:

Administer, manage and control all kinds property, personal or real, business, collections and trade of the herein appearant, empowering them to give in lease the real properties at the price, time and conditions they may deem best; to receive all rents, fruits and profits, caring for the preservation, repair and development of such real properties; to spend for such purpose the money necessary therefor; to expel through legal means all delinquent tenants and lessees of the properties, and to perform all other acts and business of a zealous and intelligent attorney-in-fact.

To demand payment, collect and receive all and any sums or amounts of money, credits, dividends and interests pertaining
8 to the appearant or that may be due to him by any person or persons, corporations, associations or Government dependency by reason of whatsoever title, cause of action or right, and for this purpose to execute all necessary and adequate judicial or extrajudicial means to accomplish this object; and for all such collections, demands for payment or money received they may sign and issue the corresponding receipts, letters of payment or such other documents as may be required by the transaction, cancelling the mortgages or attachments to which the properties of the debtors and their sureties may be subjected to.

To pay, deliver or satisfy the things, properties and amounts that the herein appearant may be under an obligation to give or pay and also to pay all taxes and imposts to which any kind of property may — subject to; exacting for all money by them paid the necessary receipts or letters of payment.

To buy, sell, exchange, transfer, or to receive in payment or by way of compensation, or otherwise to have and to sell all sort of property, personal, semi-personal, real, species, fruits, merchandise, effects, rights and choses in action for the amounts and conditions they may deem convenient; to receive and pay any amount in advance and cash all installment; to give and receive the things that may be the object of a transaction or exchange giving therefor the corresponding instruments of adquisition or of transfer, and obtaining copies or certified copies of such instruments and to cause the

registration of all real property in the proper Registry of
9 Deeds.

To loan or to borrow any amount of money or other fungible things at the rate of interest, time and conditions they may wish and deem convenient; to collect and pay the amount of capital or their interests when they should fall due, issuing and signing the corresponding public or private documents with or without warranty, either mortgage, personal or pignoratitious.

To ask for accounting from persons bound to make them to me for any reason; to examine and liquidate same, approve or disapprove them on their merits, and to receive the money that may be due me according to the accounting or to give documents of payment, relinquishment or final settlement.

To ask the preliminary registration of real property and other real rights that I may have a right to, causing such preliminary registrations to become final; to initiate proceedings to clear the cl-uds over the titles of land which may not have registered titles, and having obtained the declaration of good title to cause it to be registered in the proper Registry of Deeds.

To ask the fixing of the boundary lines of property and erecting boundary monuments, either to the administrative officials or through judicial channels instituting therefor the necessary legal proceedings.

To give the right to graze cattle in the mountains and properties of the appearant for the price and at the conditions they may deem convenient.

To take material or symbolic possession of all sort of property that
I may acquire through any kind of title, instituting therefor
10 the necessary administrative or judicial proceedings.

To remit all or part of the debts of deserving debtors or give them extension of time within which to make payment.

To accept all kinds of property whether real or personal in payment of debts at their agreed assessed value and with the conditions they may think best.

To accept by the ordinary means or with benefit of inventory the testate or intestate inheritances that I may be entitled; to institute adequate proceedings for the declaration of heirs until finally decided; to take part in all and every proceeding toward the making of the inventory, valuation, liquidation, division, and adjudication of testamentary estate; to give their approval to such proceedings or to oppose them if necessary; to appoint experts and accountants to make the liquidation and division; to give their approval to those appointed by the other parties; to take and take charge of all kinds of property that may be allot-ed to me, executing in due form the required documents, private or public, with the formalities and conditions in law necessary for their validity and conclusiveness, including in such documents such limitations as easements and other incumbrances, and by executing all acts, business and proceedings that may be necessary for the object aforementioned.

To take part in assignments of property, insolvency, bankruptcy, and suspension of payments of my debtors, and taking part in the
meetings for the appointment of assignees, administrators or

11 receivers, to audit the credits and challenging those which they deem are not legitimate credits, and approve or oppose the proposed agreement submitted by the petitioner in bankruptcy and accounts of the receiver; to oppose the percentage of credits to be paid if they deem it unjust, to enter into any transaction which they may consider of advantage and to execute all transactions that may be necessary until the termination of such business and its incidents.

To charter vessels, load and sail them and to arrange everything necessary for the purpose.

To execute and sign bills, policies, bills of lading and such other documents that may be necessary to carry out the provisions of this power of attorney.

To receive and take from the Custom Houses all sorts of merchandise and goods consigned to me; sign all declarations for such effects at the Custom House; and whenever necessary to claim for non-delivery of said goods, and to file with the proper authorities complaints in accordance with Customs legislation.

To enter into any kind of contract, both civil and mercantile, reducing same into either private or public document, which shall contain a proviso as to its finality, and the nature of each contract taken into consideration.

To draw, indorse, accept, take part and dispose of any bill, draft, warrant, check and all kind of negotiable instrument; to pay
12 or collect them at its maturity, to protest them for lack of acceptance or payment, in the latter case to avail themselves of the rights granted by the Code of Commerce by filing suit against the proper party or parties for the recovery of its face value, interests, costs and damages.

To place in the Banks, corporations or private concerns all the funds in current account, custody, deposit or otherwise; to take the necessary steps for its withdrawal, receipt, and collection; to sign checks, notes, bills, bills of lading, declarations, and all necessary documents.

To compromise all and every kind of credits, actions, and rights; to stipulate the basis and conditions under which the compromise shall be effected; and to submit, if a compromise cannot be brought about, the decision to judgment of arbiters, and to that purpose to execute the necessary public document.

To reduce into public or private documents all acts done, contracts entered into, and liabilities or duties imposed upon them, said document shall contain provisions enforceable at law as to its validity and finality, the special nature of each case taken into consideration.

To take part in all kind of cases and proceedings which are before any Court *of* Justice of the Peace, Court of First Instance, Supreme Court, and other ordinary court or any court of special juris-
13 diction; to appear before any of them and to bring any action, criminal or civil, which is necessary and proper; to sue and follow arbitration and voluntary jurisdiction proceedings, ordinary, administrative, possessory and those decidedly summary criminal and civil actions, interventions in probate bankruptcy and in-

solvency proceedings and all others known in law; to file complaints, answers, informations, and all other necessary pleadings; to take exceptions; to give and present evidence of judicial confessions, documentary, expert, oral and other evidence admissible by law; to impeach and contradict whatever may be made, done, or carried ou to the contrary; to receive all sorts of notices, citations, and summons; to challenge the power to hear and determine cases of judicial officers; to impeach witnesses; to prosecute reinstatements, appeals, annulments, equities, elucidation, certiorari, writs of error, reviews, and sue civil as well as criminal liabilities in connection with decrees, orders, and sentences; to withdraw from proceedings already begun; to ask for processes, attachments, confirmations of preliminary attachments, release of attachments, appraisements, sales of goods, and executions of sentences; and to do all other acts, proceedings, investigations, and transactions which the laws on procedure prescribe for the prosecution of judicial matters in accordance with law, up to the final determination of the actions in which they should take part.

14 And finally, to substitute this power totally or partially in favor of a certain person or persons which they may choose; to revoke substitutions and appoint new ones in their stead.

So that for all these and whatever may incidentally come, they are given a most ample and comprehensive power, and I agree to consider as subsisting and valid, and not to claim by any means, whatsoever they should do, in accordance with the most solemn obligation which may be had in law.

I likewise state that by virtue of the present document now executed, I revoke the general power of attorney executed by me on September 4th, nineteen hundred, before the notary Mr. José María Rosado y Calvo.

In testimony whereof, I have hereunto signed this document in triplicate, in the Philippine Islands, this twentieth day of December, one thousand nine hundred and seven.

(Sgd.) B. LEGARDA.

Signed in presence of:
(Sgd.) JOSÉ SANTOS.
(Sgd.) V. LAMIA.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila:

Before me, at the City of Manila, Philippine Islands, on this 20th day of December, A. D. 1907, personally appeared Don Benito Legarda y Tuason, known to me to be the person whose name is subscribed to the foregoing instrument, deposing upon oath that he executed the same as an act of his own free will and deed.

(Sgd.) FLORENCIO GONZALEZ DIEZ,
Notary Public.

My commission expires December 31, 1908.

(Copy.)

15 EXHIBIT "B."

Copy of the Decree No. 2471.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Having heard the case No. 2724, this Court decrees that Benito Legarda, of Manila, Philippine Islands, applicant, widower, possesses the absolute ownership of the real estate hereby adjudicated to him, situated in the City of Manila, described as follows:

Eight parcels of land known as "Hacienda de Nagtahan," marked with letters "A," "E," "F," "G," "H," "J," "K" and "L," situated in the District of Sampaloc.

Parcel "A."—Situated between Calle Balic-Balic and the Antipolo Branch of the Manila-Dagupan railroad, sites of Calubcob and Balic-Balic, barrio of San Isidro. Bounded on the N. W. by lands of San Lazaro Hospital and the Santa Clara Estate; N. E. by property of the Santa Mesa Estate and by the Parcel "B" of the applicant; S. E. by Calle and cemetery of Balic-Balic; and S. W. by the Manila-Antipolo railroad line and the estuary of Calubcob or Jalang. Beginning at a point marked "18" on plan, being the boundary monument No. 30 of the City of Manila; and from this point "18" S. 27° W., twenty meters
16 and fifty-eight centimeters (20.58) to point "19"; thence S. 46° 45′ W., sixty-six meters and fifty-four centimeters (66.54) to point "20"; thence S. 54° 05′ W., one hundred eighteen meters and ten centimeters (118.10) to point "21"; thence S. 37° 46′ W., one hundred twelve meters and seventy-five centimeters (112.75 to point "22"; thence S. 47° 10′ W., seventy meters and ninety-one centimeters (70.91) to point "23"; thence S. 78° W., three meters and sixty-four centimeters (3.64) to point "24"; thence N. 54° W., one hundred twenty-one meters and fifty-two centimeters (121.52) to point "25"; thence N. 18° 12′ W., sixty-nine meters and fifty-eight centimeters (69.58) to point "26"; thence S. 71° 45′ W., eighty meters and twenty-nine centimeters (80.29) to point "27"; thence N. 16° 50′ W., fifty-six centimeters (0.56) to point "28"; thence S. 71° 20′ W., fifty-six meters and seventy-three centimeters (56.73) to point "29"; thence S. 18° 25′ E., fifty-three centimeters (0.53) to point "30"; thence S. 71° 38′ W., five meters and ten centimeters (5.10) to point "31"; thence S. 18° 30′ E., one hundred thirty meters and forty-three centimeters (130.43) to point "32"; thence N. 60° 23′ E., four meters and ninety-seven centimeters (4.97) to point "33"; thence S. 11° 21′ E., fifty-three centimeters (0.53) to point "34"; thence N. 70° 20′ E., fifty-six meters and ninety-six centimeters (56.96) to point "35"; thence N. 11° 21′ W., fifty-three centimeters (0.53) to point "36";

17 thence N. 70° 35′ E., seventy-nine meters and sixty-five centimeters (79.65) to point "37"; thence N. 18° 12′ W., forty-seven meters and eleven centimeters (47.11) to point "38"; thence S. 55° 10′ E., one hundred twelve meters and sixty-five centimeters (112.65) to point "39"; thence S. 11° 30′ E., eight meters and fifty-one centimeters (8.51) to point "40"; thence S. 26° 35′ —, fifty-one meters and thirty-two centimeters (51.32) to point "41"; thence S. 29° 15′ W., forty-three meters and fifty-one centimeters (43.51) to point "42"; thence S. 11° 25′ W., one hundred fifty-one meters and sixty centimeters (151.60) to point "43"; thence S. 12° 40′ W., seventy-nine meters and seventy centimeters (79.70) to point "44"; thence S. 26° 20′ W., twenty-five meters and twenty-seven centimeters (25.27) to point "1"; thence S. 46° 15′ W., eleven meters and twenty-nine centimeters (11.29) to point "2"; thence S. 53° 24′ W., ninety-one meters and twenty-one centimeters (91.21) to point "3"; thence N. 45° W., one thousand two hundred and thirty-four meters and sixty centimeters (1,234.60) to point "4"; thence N. 37° 40′ E., seventeen meters and fifty-seven centimeters (17.57) to point "5"; thence N. 27° 35′ W., twenty-two meters and forty-three centimeters (22.43) to point "6"; thence N. 1° E., seventeen meters and fifty centimeters (17.50) to point "7"; thence N. 30° W., twenty meters (20) to point "8"; thence N. 4° E., twenty-
18 five meters (25) to point "9"; thence N. 78° 20′ E., fifty-eight meters and sixty-eight centimeters (58.68) to point "10"; thence N. 68° 50′ E., thirty-three meters (33) to point "11"; thence N. 61° 13′ E., ninety-eight meters and twenty-three centimeters (98.23) to point "12"; thence N. 57° 38′ E., fifty-one meters and seventy centimeters (51.70) to point "13"; thence S. 39° E., thirty-six meters and forty-three centimeters to point "14"; thence N. 68° 55′ E., three hundred meters and nineteen centimeters (300.19) to point "15"; thence S. 11° 45′ W., one hundred sixteen meters and seventy-one centimeters (116.71) to point "16"; thence S. 73° 35′ E., six hundred nineteen meters and five centimeters (619.05) to point "17"; thence S. 53° 50′ E., three hundred five meters (305) to point of beginning; containing seven hundred thirty-two thousand two hundred fifty-two square meters and fifty-nine square centimeters (732,252.59 sq. m.). Lines from point "1" to "3", from "18" to "24" and from "39" to "1" follow the N. W. side of Calle Balic-Balic, from "3" to "4" the N. E. side of the Manila-Antipolo railroad line, from "4" to "9" the bank of the estuary Calubcob or Jalang, and from "17" to "18" the divisionary line between the City of Manila and the Province of Rizal.

Parcel "E."—Situated at the corner of Balic-Balic Street and a right of passage, in the barrio of San Roque. Bounded on the N. W. by Calle Balic-Balic, N. E. by the Parcel "D" of the applicant, S. E. by lands of the Santa Mesa Estate, and S. W. by said
19 lands and a right of passage. Beginning at a point marked "11" on plan, which point is the intersection of the S. E. line of Balic-Balic Street and the divisionary line between the City of Manila and the Province of Rizal; and from this point "11" S. 53° 50′ E., six hundred twenty-eight meters (628) to point "12";

thence S. 13° 20′ W., ten meters and ninety centimeters (10.90) to point "13"; thence S. 46° W., five meters and twenty-five centimeters (5.25) to point "14"; thence S. 57° 30′ W., two hundred thirty-seven meters and eighty-five centimeters (237.85) to point "15"; thence S. 60° 48′ W., fifty-two meters and thirty centimeters (52.30) to point "16"; thence S. 77° 50′ W., eighty-seven meters and thirty-six centimeters (87.36) to point "17"; thence S. 53° 30′ W., one hundred twenty-nine meters and seventeen centimeters (129.17) to point "18"; thence S. 7° 20′ E., six meters and twenty centimeters (6.20) to point "19"; thence S. 46° 10′ W., seventy-six meters and fifty-three centimeters (76.53) to point "20"; thence S. 47° 50′ W., forty-four meters and ninety-five centimeters (44.95) to point "21"; thence S. 61° 02′ W., ten meters and fifteen centimeters (10.15) to point "22"; thence S. 56° 55′ W., seventeen meters and fifty-five centimeters (17.55) to point "23"; thence S. 73° 20′ W., sixty-three meters and thirty-four centimeters (63.34) to point "24"; thence S. 61° 15′ W., sixty meters and sixty-five centimeters
20 (60.65) to point "25"; thence S. 57° W., twenty-seven meters and four centimeters (27.04) to point "26"; thence S. 33° 05′ W., thirty-eight meters and ninety-nine centimeters (38.99) to point "27"; thence N. 41° 25′ W., one hundred seven meters and eighty-three centimeters (107.83) to point "28"; thence S. 48° 45′ W., forty-one meters and eleven centimeters (41.11) to point "29"; thence N. 20° 50′ W., fifty-two meters and sixty-five centimeters (52.65) to point "30"; thence N. 17° 30′ W., twenty-two meters and thirty-nine centimeters (22.39) to point "31"; thence N. 30° 05′ W., sixty-four meters and thirty-six centimeters (64.36) to point "32"; thence N. 22° 45′ W., twenty-five meters and twenty-eight centimeters (25.28) to point "33"; thence N. 5° 05′ W., sixteen meters and ninety-seven centimeters (16.97) to point "1"; thence N. 12° 40′ E., one hundred two meters and nine centimeters (102.09) to point "2"; thence N. 11° E., one hundred fifty-one meters and seventy-three centimeters (151.73) to point "3"; thence N. 29° 58′ E., forty-eight meters and fifty centimeters (48.50) to point "4"; thence N. 27° E., forty-eight meters and thirty-four centimeters (48.34) to point "5"; thence N. 28° 50′ E., twenty-one meters and eight centimeters (21.08) to point "6"; thence N. 46° 35′ E., sixty-four meters and ninety-eight centimeters (64.98) to point "7"; thence N. 37° E., one hundred twelve meters and forty-seven
21 centimeters (112.47) to point "8"; thence N. 55° 30′ E., one hundred eighteen meters and forty-four centimeters (118.44) to point "9"; thence N. 47° 45′ E., sixty-five meters and ninety-nine centimeters (65.99) to point "10"; thence N. 29° 15′ E., twenty-three meters and eighty centimeters (23.80) to the point of beginning; containing three hundred eighty-eight thousand eight hundred twenty-seven square meters and twenty-five square centimeters (388,827.25 sq. m.). Lines from point "1" to "11" follow the S. E. side of Calle Balic-Balic, from "11" to "12" the divisionary line between the City of Manila and the Province of Rizal, and from "29" to "1" the N. E. side of a right of passage.

Parcel "F."—Situated at Balic-Balic Street between the Manila-

Antipolo railroad line and a stream known as San Roque, Calubcob or Jalang. Bounded on the N. E. by the Manila-Antipolo railroad line; S. E. by Calle Balic-Balic; and W. and S. W. by a stream known as San Roque and Calubcob or Jalang. Beginning at a point marked "1" on plan, which point is the intersection of the N. W. line of Balic-Balic Street and the N. E. line of the stream San Roque; and from this point "1" N. 34° W., twenty-eight meters and ninety-eight centimeters (28.98) to point "2"; thence N. 25° 35′ W., seventeen meters and sixty-two centimeters (17.62) to point "3"; thence N. 5° 30′ E., eleven meters and thirty-three centimeters (11.33) to point "4"; thence N. 21° 15′ W., nine meters and
22 fifty centimeters (9.50) to point "5"; thence N. 9 W., nine meters (9) to point "6"; thence N. 78° 32′ W., nine meters (9) to point "7"; thence S. 78° 40′ W., twenty-six meters and twenty centimeters (26.20) to point "8"; thence N. 54° 06′ W., twenty-seven meters and fifty centimeters (27.50) to point "9"; thence N. 27° 10′ W., twenty-three meters and twenty centimeters (23.20) to point "10"; thence N. 32° 22′ W., fifteen meters and thirty centimeters (15.30) to point "11"; thence N. 48° 30′ W., twenty-eight meters and seventy-five centimeters (28.75) to point "12"; thence N. 7° 25′ E., thirty-three meters and sixty-five centimeters (33.65) to point "13"; thence N. 0° 45′ E., twenty-six meters and twenty-five centimeters (26.25) to point "14"; thence N. 21° 33′ W., fifty-seven meters and eighty centimeters (57.80) to point "15"; thence N. 11° W., eighty-five meters (85) to point "16"; thence N. 80° W., six meters and eighty centimeters (6.80) to point "17"; thence N. 83° 30′ W., thirty-two meters (32) to point "18"; thence N. 35° 45′ W., eighteen meters and thirty centimeters (18.30) to point "18"; thence N. 55° 30′ W., six meters and eighty centimeters (6.80) to point "20"; thence N. 35° 20′ W., twenty-three meters and eighty centimeters (23.80) to point "21"; thence N. 13° E., thirty-two meters (32) to point "22"; thence N. 28° 30′ W., twenty-two meters and fifty centimeters (22.50) to point "23"; thence N. 38° 45′ W., twenty-two meters and thirty centi-
23 meters (22.30) to point "24"; thence N. 3° 15′ W., thirty-three meters and ten centimeters (33.10) to point "25"; thence N. 10° E., thirty-three meters and twenty-five centimeters (33.25) to point "26"; thence N. 31° 28′ W., twenty-four meters and ninety centimeters (24.90) to point "27"; thence N. 38° W., nineteen meters (19) to point "28"; thence N. 4° 50′ E., thirteen meters and forty centimeters (13.40) to point "29"; thence N. 5° 35′ E., thirty meters (30) to point "30"; thence N. 82° 10′ W., thirty-one meters and fifty centimeters (31.50) to point "31"; thence N. 37° 35′ W., twelve meters and fifty centimeters (12.50) to point "32"; thence N. 74° 57′ W., forty meters (40) to point "33"; thence N. 2° 58′ W., twelve meters (12) to point "34"; thence N. 1° 59′ W., fourteen meters (14) to point "35" thence N. 39° 20′ E., eleven meters and ninety centimeters (11.90) to point "36"; thence N. 9° 30′ E., thirty-three meters and fifty centimeters (33.50) to point "37"; thence N. 42° 48′ E., eighteen meters and ninety centimeters (18.90) to point "38"; thence N. 43° 30′ E., twenty-three meters

and fifteen centimeters (23.15) to point "39"; thence N. 47° 15′ E., six meters and fifty-five centimeters (6.55) to point "40"; thence N. 0° 45′ E., twelve meters (12) to point "41"; thence N. 45° 20′ W., fifty-two meters (52) to point "42"; thence N. 22° 24′ W., thirty-three meters (33) to point "43"; thence N., four
24 meters and eighty centimeters (4.80) to point "44"; thence N. 37° 30′ W., twenty meters (20) to point "45"; thence N. 53° 35′ W., twenty meters and ten centimeters (20.10) to point "46"; thence N. 14° 45′ W., forty-three meters and twenty-five centimeters (43.25) to point "47"; thence N. 27° 20′ E., nine meters (9) to point "48"; thence N. 25° 25′ W., twenty-eight meters and thirty-three centimeters (28.33) to point "49"; thence N. 14° 35′ W., twenty-four meters and forty-eight centimeters (24.48) to point "50"; thence N. 50° 25′ W., eighteen meters and ten centimeters (18.10) to point "51"; thence N. 75° W., fifteen meters (15) to point "52"; thence N. 31° 02′ W., thirteen meters (13) to point "53"; thence N. 14° 13′ W., twenty-three meters and thirty centimeters (23.30) to point "54"; thence N. 20° 30′ W., seventeen meters and forty-five centimeters (17.45) to point "55"; thence N. 54° 28′ E., twenty-nine meters (29) to point "56"; thence N. 6° 20′ W., thirty-two meters and forty-eight centimeters (32.48) to point "57"; thence N. 43° 50′ E., twenty-eight meters and fifty centimeters (28.50) to point "58"; thence N. 8° W., twenty-seven meters and forty-seven centimeters (27.47) to point "59"; thence N. 32° W., twelve meters and fifty centimeters (12.50) to point "60"; thence N. 13° W., forty-three meters and thirty centimeters (43.30) to point "61"; thence N. 19° 25′ E., seventeen meters and twenty centimeters (17.20) to point "62"; thence S. 45° E., one
25 thousand two hundred thirty-one meters and twenty-five centimeters (1,231.25) to point "63"; thence S. 58° 15′ W., eighty-three meters and sixty centimeters (83.60) to point "64"; thence S. 54° 58′ W., one hundred twenty four meters and twenty-eight centimeters (124.28) to point "65"; thence S. 57° 35′ W., eighty-nine meters and seventy-one centimeters (89.71) to point "66"; thence S. 43° 55′ W., thirty-two meters and twenty centimeters (32.20) to point "67"; thence S. 55° 55′ W., seventeen meters and seventy-nine centimeters (17.79) to point "68"; thence S. 58° 10′ W., sixty-one meters and four centimeters (61.04) to point "69"; thence S. 64° 15′ W., seventy-nine meters and sixty-seven centimeters (79.67) to point "70"; thence S. 62° W., forty-two meters and seventy-two centimeters (42.72) to the point of beginning; containing four hundred nine thousand four hundred forty-three square meters and fifty square centimeters (409,443.50 sq. m.). Lines from point "1" to "62" follow the sinuosities of the E. bank of a stream known as San Roque and Calubcob or Jalang, from "62" to "63" the S. W. side of the Manila-Antipolo railroad line, and from "63" to "1" the N. W. side of Balic-Balic Street.

Parcel "G."—Situated between Balic-Balic Street and San Roque estuary. Bounded on the N. E. by lands of Santa Clara Estate and the estuary of San Roque; S. E. by Calle Balic-Balic; and N. W., W.

and S. W. by lands of Santa Clara Estate. Beginning at
26 a point marked "1" on plan and on the ground by a stone monument, being the intersection of the N. W. line of Balic-Balic Street and the S. W. bank of San Roque estuary; and from this point "1" S. 64° 40′ W., eighty-one meters and fifty centimeters (81.50) to point "2"; thence S. 73° 55′ W., seventeen meters and fifty-two centimeters (17.52) to point "3"; thence S. 64° 15′ W., seventy-four meters and eighty-two centimeters (74.82) to point "4"; thence S. 62° 30′ W., thirty-one meters and thirty-four centimeters (31.34) to point "5"; thence S. 69° 14′ W., forty-nine meters and sixty-six centimeters (49.66) to point "6"; thence N. 28° 25′ W., thirty-three meters and eighty-nine centimeters (33.89) to point "7"; thence N. 32° 10′ W., thirty-two meters and fifty-six centimeters (32.56) to point "8"; thence N. 29° 45′ W., thirty-three meters and fifty-five centimeters (33.55) to point "9"; thence N. 2° E., twenty-four meters and thirty-seven centimeters (24.37) to point "10"; thence N. 16° 52′ E., thirty meters and nineteen centimeters (30.19) to point "11"; thence N. 12° 16′ W., thirty-three meters and ninety-six centimeters (33.96) to point "12"; thence N. 8° 42′ W., thirty-six meters and forty-two centimeters (36.42) to point "13"; thence N. 18° 35′ W., thirty meters and forty centimeters (30.40) to point "14"; thence N. 14° 15′ W., forty-eight meters and sixty-eight centimeters (48.68) to point "15"; thence N. 17°
27 20′ W., fifty-one meters and thirteen centimeters (51.13) to point "16"; thence N. 20° W., seventy-six meters and sixteen centimeters (76.16) to point "17"; thence N. 42° 35′ W., nineteen meters and eight centimeters (19.08) to point "18"; thence N. 69° W., fifteen meters and eighteen centimeters (15.18) to point "19"; thence S. 82° W., twenty-three meters and eighty-six centimeters (23.86) to point "20"; thence N. 18° 45′ W., sixty-seven meters and eighty-nine centimeters (67.89) to point "21"; thence N. 21° W., eighty-five meters and twelve centimeters (85.12) to point "22"; thence N. 37° W., thirty-five (35) meters to point "23"; thence N. 31° W., fifty-four meters and sixty-seven centimeters (54.67) to point "24"; thence N. 23° W., fifty-eight meters and seventy-seven centimeters (58.77) to point "25"; thence N. 66° 50′ E., fifteen meters and fifty-five centimeters (15.55) to point "26"; thence N. 2° 12′ W., thirty-nine meters and thirty-five centimeters (39.35) to point "27"; thence N. 8° 25′ W., thirty meters and sixty centimeters (30.60) to point "28"; thence N. 79° 25′ E., thirteen meters and sixty-one centimeters (13.61) to point "29"; thence S. 8° 30′ E., ninety-three meters and twenty-six centimeters (93.26) to point "30"; thence S. 22° 23′ E., forty-seven meters and three centimeters (47.03) to point "31"; thence S. 21° 40′ E., fifty-three meters and sixty-six centimeters (53.66) to point "32"; thence S. 21° 35′
28 E., sixty-six meters and fifty-two centimeters (66.52) to point "33"; thence N. 86° 30′ E., seventeen meters and forty centimeters (17.40) to point "34"; thence N. 69° 42′ E., twenty-two meters and nine centimeters (22.09) to point "35"; thence N. 14° W., thirty meters and sixteen centimeters (30.16) to point "36";

thence N. 25° 10′ W., twenty-two meters and thirty-eight centimeters (22.38) to point "37"; thence N. 24° 55′ W., sixty meters and forty centimeters (60.40) to point "38"; thence N. 26° 50′ W., forty-eight meters and fifty-five centimeters (48.55) to point "39"; thence N. 12° 36′ E., twelve meters (12) to point "40"; thence N. 19° 53′ W., twenty-six meters (26) to point "41"; thence N. 34° 48′ W., fifteen meters and twenty centimeters (15.20) to point "42"; thence N. 13° 32′ W., twenty-seven meters and ninety-five centimeters (27.95) to point "43"; thence N. 18° 28′ W., eighty-eight meters and thirty-five centimeters (88.35) to point "44"; thence N. 12° W., twenty-six meters and four centimeters (26.04) to point "45"; thence N. 36° 10′ W., sixteen meters and eighty-one centimeters (16.81) to point "46"; thence N. 16° 03′ W., thirty-two meters and forty centimeters (32.40) to point "47"; thence N. 29° 30′ W., forty-three meters and thirty-three centimeters (43.33) to point "48"; thence N. 62° 32′ E., fifty-two meters and twenty-two centimeters (52.22) to point "49"; thence S. 44° 26′ E., seven meters and thirty centimeters (7.30) to point "50"; thence S. 22°
29 30′ E., fifty-five meters and ninety centimeters (55.90) to point "51"; thence S. 23° 45′ E., sixty-three meters and twenty-four centimeters (63.24) to point "52"; thence S. 18° 40′ E., fifty-two meters and ninety-five centimeters (52.95) to point "53"; thence S. 30° 08′ E., twenty-five meters and eighty-six centimeters (25.86) to point "54"; thence S. 23° E., sixty-three meters and twenty-nine centimeters (63.29) to point "55"; thence S. 22° E., seventy-four meters and fifty-six centimeters (74.56) to point "56"; thence N. 60° 27′ E., twenty-four meters and twenty centimeters (24.20) to point "57"; thence N. 20° 30′ W., twenty-nine meters and thirty-four centimeters (29.34) to point "58"; thence N. 7° 12′ W., twenty meters and eighty-one centimeters (20.81) to point "59"; thence N. 24° 35′ E., ten meters and twenty-seven centimeters (10.27) to point "60"; thence N. 60° 25′ E., sixteen meters and seventy-nine centimeters (16.79) to point "61"; thence N. 83° E., eight meters and twenty-five centimeters (8.25) to point "62"; thence S. 63° 08′ E., fifteen meters and forty-seven centimeters (15.47) to point "63"; thence S. 5° 15′ E., twenty-four meters and ninety-one centimeters (24.91) to point "64"; thence S. 16° 04′ E., twenty meters and sixteen centimeters (20.16) to point "65"; thence S. 18° 10′ E., sixty-six meters and twenty-nine centimeters (66.29) to point "66"; thence S. 68° 45′ W., twenty-two meters and
30 sixty-eight centimeters (22.68) to point "67"; thence N. 50° 05′ W., twenty-four meters and seven centimeters (24.07) to point "68"; thence N. 31° 10′ W., nineteen meters and fifty-six centimeters (19.56) to point "69"; thence S. 62° 50′ W., eighteen meters and sixty-nine centimeters (18.69) to point "70"; thence S. 33° 55′ E., fifty-nine meters and twenty centimeters (59.20) to point "71"; thence S. 52° 28′ E., twenty meters and eighty-nine centimeters (20.89) to point "72"; thence S. 39° 52′ E. thirty-four meters and sixty centimeters (34.60) to point "73"; thence N. 46° 20′ E., fifteen meters and thirty-six centimeters (15.36) to point "74"; thence N. 27° 55′ E., fifteen meters and thirty-two centimeters

(15.32) to point "75"; thence N. 75° 25′ E., thirty-five meters and eighty-eight centimeters (35.88) to point "76"; thence S. 26° 35′ E., twenty-six meters and eighty centimeters (26.80) to point "77"; thence S. 30° E., twenty-three meters and ninety-eight centimeters (23.98) to point "78"; thence S. 11° 25′ W., twenty-nine meters and seven centimeters (29.07) to point "79"; thence S. 24° 20′ E., twenty-eight meters and seventy-two centimeters (28.72) to point "80"; thence S. 43° 35′ E., thirty-three meters and nine centimeters (33.09) to point "81"; thence S. 79° 45′ E., thirty-two meters and fifteen centimeters (32.15) to point "82"; thence S. 11° E., seventy-seven meters (77) to point "83"; thence S. 22° 45′ E., fifty-eight meters and sixty centimeters (58.60) to point "84"; thence
31 S. 0° 35′ E., twenty-five meters (25) to point "85"; thence S. 10° 30′ W., thirty-six meters (36) to point "86"; thence S. 45° 45′ E., thirty-two meters and forty-five centimeters (32.45) to point "89"; thence S. 87° 45′ E., fifteen meters (15) to point "90"; thence N. 74° 20′ E., sixteen meters and eighty centimeters (16.80) to point "91"; thence S. 60° E., six meters and eighty centimeters (6.80) to point "92"; thence S. 6° 18′ E., twenty-eight meters and ten centimeters (28.10) to point "93"; thence S. 29° 15′ E., forty-three meters and ten centimeters (43.10) to the point of beginning; containing fifteen thousand two hundred thirty square meters and twenty-two square centimeters (15,230.22 sq. m.). Lines from point "1" to "6" follow the N. W. side of Calle Balic-Balic and from "76" to "1" the sinuosities of S. W. bank of San Roque estuary.

PARCEL "H."—Situated between Calle Guipit and corner of Balic-Balic and Alix Streets, barrio of San Roque. Bounded on the N. by Calle Balic-Balic; E. by Calle Guipit; S. by Calle Alix and properties of Gonzalo Tuason, Isidra Lorente, Joaquina Barrera and Ramon Sanchez Torrejon; and W. by properties of Ramon Sanchez Torrejon, heirs of Domingo Espiritu, Agapito Changco, Jose Gabriel Francisco and Simeon, Jose and Placida Alma Jose, and by Calle Lardizabal. Beginning at a point marked "1" on plan, being the intersection of the S. W. line of Calle Guipit and the S. E. line of Calle Balic-Balic; and from this point "1" S. 17° 13′ E., two
32 hundred fifty-six meters and eighty-five centimeters (256.85) to point "2"; thence S. 75° 05′ W., twenty-eight meters (28) to point "3"; thence N. 13° 05′ W., two meters and forty-six centimeters (2.46) to point "4"; thence S. 77° 05′ W., eight meters and ninety-two centimeters (8.92) to point "5"; thence S. 12° 45′ E., twenty-five meters and seventeen centimeters (25.17) to point "6"; thence S. 75° 40′ W., three meters (3) to point "7"; thence N. 15° W., twenty-five meters and twenty-two centimeters (25.22) to point "8"; thence S. 77° 05′ W., sixteen meters and sixty-five centimeters (16.65) to point "9"; thence N. 14° W., five meters and eighty-four centimeters (5.84) to point "10"; thence S. 76° 12′ W., six meters and forty-two centimeters (6.42) to point "11"; thence N. 12° 25′ W., one meter and eighteen centimeters (1.18) to point "12"; thence S. 76° 50′ W., one meter and eighty-two centimeters (1.82) to point "13"; thence S. 15° 46′ E., thirty-two meters and ninety centimeters (32.90) to point "14"; thence S. 73° 25′ W.,

twenty meters and sixty-three centimeters (20.63) to point "15"; thence N. 12° 30′ W., twenty-two meters and thirty-five centimeters (22.35) to point "16"; thence S. 77° W., fifty-five centimeters (0.55) to point "17"; thence N. 12° W., eight meters and five centimeters (8.05) to point "18"; thence N. 73° E., four meters and twenty centimeters (4.20) to point "19"; thence N. 13° W., twenty-two meters and thirteen centimeters (22.13) to point "20"; thence
33 S. 75° W., nineteen meters and fifty centimeters (19.50) to point "21"; thence S. 9° 45′ E., fifty-two meters and eighteen centimeters (52.18) to point "22"; thence S. 73° 25′ W., three meters and seventy-six centimeters (3.76) to point "23"; thence S. 68° 20′ W., thirty-four meters and sixty centimeters (34.60) to point "24"; thence S. 64° 45′ W., seventeen meters and sixty centimeters (17.60) to point "25"; thence N. 19° W., fourteen meters and twenty-two centimeters (14.22) to point "26"; thence N. 17° W., nine meters and ninety centimeters (9.90) to point "27"; thence S. 68° 25′ W., fifteen meters and twenty-seven centimeters (15.27) to point "28"; thence N. 17° 30′ W., eight meters and seventy centimeters (8.70) to point "29"; thence S. 72° 30′ W., fifteen meters and fifty centimeters (15.50) to point "30"; thence S. 75° 30′ W., three meters and forty centimeters (3.40) to point "31"; thence S. 83′ W., nine meters and five centimeters (9.05) to point "32"; thence N. 1° 55′ W., twenty meters (20) to point "33"; thence N. 18° 33′ E., sixty-four centimeters (0.64) to point "34"; thence N. 12° 35′ W., fifteen meters and thirty-five centimeters (15.35) to point "35"; thence N. 6° 10′ W., nineteen meters and twenty-three centimeters (19.23) to point "36"; thence N. 83° 50′ E., twenty meters and fifty-three centimeters (20.53) to point "37"; thence N. 16° 30′ W., seven meters and thirty-seven centimeters (7.37) to point "38"; thence
34 N. 13° W., ten meters and thirty-two centimeters (10.32) to point "39"; thence N. 14° 18′ W., forty-three meters and thirty-nine centimeters (43.39) to point "40"; thence S. 88° 14′ W., two meters and thirty centimeters (2.30) to point "41"; thence N. 4° 55′ W., five meters and eighty-eight centimeters (5.88) to point "42"; thence N. 77° 53′ E., fifty meters and sixty-two centimeters (50.62) to point "43"; thence N. 16° 10′ W., forty-nine meters and thirty-nine centimeters (49.39) to point "44"; thence N. 14° W., thirty-eight meters and forty centimeters (38.40) to point "45"; thence N. 24° 10′ W., twenty-seven meters and ten centimeters (27.10) to point "46"; thence N. 64° 30′ E., thirty-seven meters and sixty-three centimeters (37.63) to point "47"; thence N. 66° 08′ E., forty-four meters and seventy-nine centimeters (44.79) to point "48"; thence N. 66° 24′ E., twenty-nine meters and twenty-eight centimeters (29.28) to point "49"; thence N. 67° 58′ E., eighteen meters and sixteen centimeters (18.16) to the point of beginning; containing forty-four thousand five hundred eleven square meters and twelve square centimeters (44,511.12 sq. m.). Lines from point "1" to "2" follow the S. W. side of Calle Guipit, from "6" to "7," from "14" to "15" and from "22" to "25" the N. side of Calle Alix, and from "46" to "1" the S. E. side of Calle Balic-Balic.

Parcel "J."—Situated at Rotonda, corner Calles Santa Mesa and Nagtahan. Bounded on the North by Calle Santa Mesa and property of Manuela and Justo Peña; E. by the stream Valencia; 35 S. by property of the brothers O. Farrell; and W. by Calle Nagtahan and the Rotonda. Beginning at a point marked "1" on plane, being the intersection of the W. bank of the stream Valencia and the S. line of Calle Santa Mesa; from this point "1" S. 21° 30′ E., fifteen meters (15) to point "2"; thence S. * * * W., twelve meters (12) to point "3"; thence S. 47° 45′ W., sixteen meters and twenty-five centimeters (16.25) to point "4"; thence S. 25° 50′ W., twenty-five meters (25) to point "5"; thence S. 1° E., eight meters and fifty centimeters (8.50) to point "6"; thence S. 27° 50′ W., eleven meters and thirty centimeters (11.30) to point "7"; thence S. twenty-seven meters and fifty centimeters (27.50) to point "8"; thence S. 77° 30′ W., forty-five meters and eighty-nine centimeters (45.89) to point "9"; thence S. 77° 19′ W., sixty-four meters and twelve centimeters (64.12) to point "10"; thence S. 80° W., forty-three meters and sixty-eight centimeters (43.68) to point "11"; thence S. 78° 20′ W., sixty-seven meters and ten centimeters (67.10) to point "12"; thence N. 28° 30′ W., fifty-nine meters and eighty centimeters (59.80) to point "13"; thence N. 2° 20′ E., three meters and twenty centimeters (3.20) to point "14"; thence N. 14° 35′ E., four meters and four centimeters (4.04) to point "15"; thence, following the periphery of an arch of 27.80 meters of radius and 60 degrees, being the vertex the center of the public fountain situated at the Rotonda de Sampaloc, to point "16"; thence 36 N. 14° E., four meters and ten centimeters (4.10) to point "17"; thence N. 34° 35′ E., three meters and seventy-three centimeters (3.73) to point "18"; thence N. 63° E., fifteen meters and twenty-one centimeters (15.21) to point "19"; thence N. 66° 30′ E., eight meters and fifty-three centimeters (8.53) to point "20"; thence N. 70° E., twenty-four meters and fifty-five centimeters (24.55) to point "21"; thence N. 72° 40′ E., twenty meters and ninety-six centimeters (20.96) to point "22"; thence S. 15° 30′ E., forty-two meters and seventy-seven centimeters (42.77) to point "23"; thence S. 17° 15′ E., eleven meters and seven centimeters (11.07) to point "24"; thence N. 73° 30′ E., twenty-nine meters and thirteen centimeters (29.13) to point "25"; thence N. 77° E., six meters and thirty-two centimeters (6.32) to point "26"; thence N. 11° W., ten meters and thirty centimeters (10.30) to point "27"; thence N. 9° 45′ W., twenty-five meters and twelve centimeters (25.12) to point "28"; thence N. 18° 45′ W., fourteen meters and ninety-eight centimeters (14.98) to point "29"; thence N. 80° 35′ E., nineteen meters and seventy-eight centimeters (19.78) to point "30"; thence N. 80° 45′ E., twenty-four meters and forty-one centimeters (24.41) to point "31"; thence N. 80° 35′ E., thirty-seven meters and nine centimeters (37.09) to point "32"; thence N. 80° 30′ E., sixty meters and seventy centimeters (60.70) to point "33"; thence N. 36 E., thirteen meters and eighty-

37 three centimeters (13.83) to the point of beginning; containing twenty-four thousand six hundred square meters and seventy square centimeters (24,600.70 sq. m.). Line from point "1" to "8" follow the W. bank of the estuary Valencia, from "12" to "13" the N. E. side of Calle Nagtahan and from "17" to "22" and from "29" to "1" the S. side of Calle Santa Mesa.

Parcel "K."—Situated at Calle Santa Mesa. Bounded on the N. by a piece of land of the Carriedo water-tube; E. by the estuary Valencia; S. by Calle Santa Mesa; and W. by property of Justo Peña. Beginning at a point marked "1" on plan, being the intersection of the N. line of Calle Santa Mesa and the W. bank of the estuary Valencia; and from this point "1" S. 82° 25′ W., one hundred eight meters and two centimeters (108.02) to point "2"; thence N. 7° 30′ W., eight meters (8) to point "3"; thence N. 82° 40′ E., one hundred sixteen meters and forty-seven centimeters (116.47) to point "4"; thence S. 36° W., ten meters and two centimeters (10.02) to point "5"; thence S. 4° 30′ E., seventy centimeters (0.70) to the point of beginning; containing eight hundred seventy-nine square meters and forty-eight square centimeters (879.48 sq. m.). Lines from point "1" to "2" follow the N. side of Calle Santa Mesa and from "4" to "1" the W. bank of the estuary Valencia.

Parcel "L."—Situated at Alix Street between the Sampaloc estuary and a branch of same estuary. Bounded on the N. by
38 Calle Alix, E. and S. by the estuary of Sampaloc, W. by property of Serapia Oliva and Felix de la Rama, there being a branch os said estuary between the last two estates. Beginning at a point marked "1" on plan, being the intersection of the S. line of Calle Alix and the W. bank of the estuary of Sampaloc; from this point "1" S. 5° 08′ E., eighteen meters and fifty-five centimeters (18.55) to point "2"; thence S. 13° 40′ E., seventeen meters and sixty centimeters (17.60) to point "3"; thence S. 50° 05′ E., seventeen meters and sixty centimeters (17.60) to point "4"; thence S. 30° 20′ E., nine meters (9) to point "5"; thence S. 42° 45′ W., forty-one meters and fifty centimeters (41.50) to point "6"; thence N. 82° 35′ W., seven meters and twelve centimeters (7.12) to point "7"; thence N. 36° 50′ W., thirty-eight meters and thirty-five centimeters (38.35) to point "8"; thence N. 63° 40′ W., sixteen meters and sixty-five centimeters (16.65) to point "9"; thence S. 76° 30′ W., sixteen meters and seventy-four centimeters (16.74) to point "10"; thence S. 8° 15′ W., forty-four meters and seven centimeters (44.07) to point "11"; thence S. 26° 25′ W., seven meters (7) to point "12"; thence S. 78° 30′ W., seven meters and fourteen centimeters (7.14) to point "13"; thence N. 65° 30′ W., forty-six meters (46) to point "14"; thence S. 85° 30′ W., nineteen meters and ninety centimeters (19.90) to point "15"; thence S. 71° 40′
39 W., seventeen meters and twenty-five centimeters (17.25) to point "16"; thence S. 47° 15′ W., eleven meters and eighty-five centimeters (11.85) to point "17"; thence S. 28° W., seventeen meters (17) to point "18"; thence S. 4° 45′ E., twenty-two meters and thirty centimeters (22.30) to point "19"; thence S. 9° E., fifteen meters and eighty centimeters (15.80) to point "20"; thence

S. 55° 50′ W., six meters and fifty centimeters (6.50) to point "21"; thence N. 64° W., ten meters (10) to point "22"; thence N. 12° 35′ W., fifteen meters (15) to point "23"; thence N. 17° 03′ W., twelve meters and forty centimeters (12.40) to point "24"; thence N. 9° 58′ W., forty-seven meters (47) to point "25"; thence S. 83° W eight meters and seventy centimeters (8.70) to point "26"; thence S. 86° 20′ W., thirteen meters and forty-six centimeters (13.46) to point "27"; thence N. 17° 48′ W., fifteen meters and fifty-one centimeters (15.51) to point "28"; thence N. 71° W., one meter (1) to point "29"; thence N. 28° 30′ W., nine meters and forty centimeters (9.40) to point "30"; thence N. 68° 50′ E., twenty-eight meters and fifty-seven centimeters (28.57) to point "31"; thence N. 19° 40′ W., seventy-seven centimeters (0.77) to point "32"; thence N. 66° 08′ E., thirty-four meters and ninety-seven centimeters (34.97) to point "33"; thence N. 71° 26′ E., seventeen meters and twenty-five centimeters (17.25) to point "34"; thence N. 75° 26′ E.,
40 seventy-three meters and fifty-five centimeters (73.55) to point "35"; thence N. 78° 26′ E., twenty-two meters and nine centimeters (22.09) to point "36"; thence N. 77° 45′ E., forty-eight meters and sixty-five centimeters (48.65) to point "37"; thence N. 74° 32′ E., nine meters and thirty-five centimeters (9.35) to the point of beginning; containing sixteen thousand three hundred ninety-one square meters and eighty-seven square centimeters (16,391.87 sq. m.). Lines from point "1" to "22" follow the W. bank and the N., respectively, of the estuary of Sampaloc, and from "30" to "1" the S. side of Calle Alix. All points referred to are marked on three plans; bearings magnetic; date of survey, April and May, 1906, except the Parcel "H" which was surveyed on December 4, 1906, and Parcel "L" on June 12, 1908.

Therefore, it is ordered and decreed that the estate in question be registered, in accordance with the Land Registration Act, in the name of said Benito Legarda, subject, however, to any lien, which may be subsisting and to the encumbrances referred to in Section 39 of said Act, * * * of the Manila Building & Loan Association for a period of fifteen (15) years which will be due on December 31, 1919, as per deeds under dates of January 24, 1905, and September 16 of the same year.

41 Given by the Hon. W. L. Goldsborough, Judge-at-Large of the said Court of Land Registration, in Manila the 9th day of August, 1907, at ten o'clock a. m.

To which I certify:

[Seal of the Court.]

(Sgd.) A. K. JONES,
Clerk of Court.

A true copy which I hereby certify:

Issued this 7th day of September, 1908.

____ ____,
Clerk of Court.

(Copy.)

42 EXHIBIT "C."

Copy of the Decree No. 2471.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Having heard the case No. 2724, this Court decrees that Benito Legarda, of Manila, Philippine Islands, applicant, widower, possesses the absolute ownership of the real estate hereby adjudicated to him, situated in the City of Manila, described as follows:

Four parcels of land known as "Hacienda de Nagtahan," marked with letters "B," "C," "D" and "I," situated in the Municipality of Caloocan.

Parcel "B."—Situated in the Calle Balic-Balic, site of Balic-Balic, barrio of San Isidro. Bounded on the N. by lands of the Santa Mesa Estate; S. E. by Calle Balic-Balic; and S. W. by Parcel "A" of the applicant. Beginning at a point marked "A" on plan, being the boundary monument No. 30 of the City of Manila; and from this point "A" N. 53° 50′ W., following the divisionary line between the City of Manila and the Province of Rizal, three hundred five meters (300) to point "B"; thence S. 73° 35′ E., forty-two meters and eighty-five centimeters (42.85) to point "C"; thence N. 89° 30′ E., three hundred eleven meters and eighty-nine centi-
43 meters (311.89) to point "D"; thence S. 29° 45′ W., fourteen meters and nineteen centimeters (14.19) to point "E"; thence N. 68° 15′ W., four meters and eighty centimeters (4.80) to point "F"; thence N. 33° 30′ W., one hundred twenty meters and fifty-one centimeters (120.51) to point "G"; thence S. 27° *O.*, sixty-eight meters and eighty-seven centimeters (68.87) to point of beginning; containing twenty-eight thousand five hundred seventeen square meters and fifty square decimeters (28,517.50 sq. m.). Lines from point "D" to "A" follow the N. W. side of the Calle Balic-Balic.

Parcel "C."—Situated in the road of Diliman, corner to the Santa Mesa high-road, barrio of San Isidro. Bounded on the North by lands of the Santa Mesa Estate; S. E. and S. by Santa Mesa high-road; and W. by the road of Diliman. Beginning at a point marked "A" on plan, which point is the intersection of the N. line of the Santa Mesa high-road and the E. line of the road of Diliman; and from this point "A" N. 87° 56′ E., sixty meters and seventy-seven centimeters (60.77) to point "B"; thence S. 89° 27′ E., two hundred fifteen meters and eighty-nine centimeters (215.89) to point "C"; thence S. 87° 55′ W., thirty-three meters and fifteen centimeters (33.15) to point "D"; thence S. 78° 20′ W., sixty-one meters and nineteen centimeters (61.19) to point "E"; thence S. 88° 15′ W., seventy-eight meters and ninety-two centimeters (78.92)

to point "F"; thence S. 87° 56′ W., sixty meters and seventy-
44 seven centimeters (60.77) to point of beginning; containing two thousand eighty square meters (2,080 sq. m.). Line from point "A" to "B" follows the E. side of the Diliman road, and the lines from point "C" to "A" the N. side of the Santa Mesa high-road.

Parcel "D."—Situated in Calle Balic-Balic, corner Santa Mesa high-road, barrio of San Isidro. Bounded on the N. by Santa Mesa high-road; N. by lands of the Santa Mesa Estate and the Santa Mesa high-road; S. W. by lands of the Santa Mesa Estate; and S. W. by the Parcel "E" of the applicant; and N. W. by the Calle Balic-Balic. Beginning from a point marked "A" on plan, which point is the intersection of the S. W. line of Calle Balic-Balic and the divisionary line between the City of Manila and the Province of Rizal; and from this point "A" N. 29° 15′ E., seventeen meters and fifty centimeters (17.50) to point "B"; thence N. 23° 25′ E., fifty meters and forty-five centimeters (50.45) to point "C"; thence N. 34° 25′ E., one hundred fifteen meters and eight centimeters (115.08) to point "D"; thence N. 88° 05′ E., sixty-four meters and thirty-three centimeters (64.33) to point "E"; thence N. 89° E., seventy-one meters and nineteen centimeters (71.19) to point "F"; thence N. 79° 10′ E., seventy-two meters (72) to point "G"; thence S. 82° E., forty-two meters and sixty-two centimeters (42.62) to point "H"; thence S. 26° 08′ E., twenty-two meters and
45 seventy-two centimeters (22.72) to point "I"; thence S. 70° 30′ E., forty-eight meters and nine centimeters (48.09) to point "J"; thence S. 51° 05′ E., thirty-eight meters and forty-two centimeters (38.42) to point "K"; thence S. 47° 55′ E., seventy-one meters and forty-four centimeters (71.44) to point "L"; thence S. 48° 55′ E., eighty-one meters and eight centimeters (81.08) to point "M"; thence S. 43° 25′ E., thirty-three meters and seventy-four centimeters (33.74) to point "N"; thence S. 43° E., thirty-seven meters and sixty-eight centimeters (37.68) to point "O"; thence S. 48° 48′ E., nineteen meters and twenty centimeters (19.20) to point "P"; thence S. 38° 15′ E., twenty-one meters and forty-nine centimeters (21.49) to point "Q"; thence S. 45° 50′ E., thirty meters and nine centimeters (30.09) to point "R"; thence S. 18° 10′ E., ninety meters and thirty centimeters (90.30) to point "S"; thence S. 57° 05′ W., ninety-one meters and eighty-four centimeters (-1.84) to point "T"; thence S. 49° 30′ W., sixty-two meters and sixty centimeters (62.60) to point "U"; thence S. 39° 30′ W., nineteen meters and five centimeters (19.05) to point "V"; thence S. 26° 47′ W., twenty-seven meters (27) to point "W"; thence S. 13° 27′ W., seventy-two meters and ninety-seven centimeters (72.97) to point "X"; thence N. 53° 50′ W., six hundred twenty-eight meters (628) to the point of beginning; containing one hundred ninety-one thousand six hundred forty-seven square meters
46 and fifty square centimeters (191,647.50 sq. m.). Lines from point "A" to "D" follow the S. W. side of Calle Balic-Balic, from "D" to "G" and from "R" to "S", respectively, S. and

S. W. sides of the Santa Mesa high-road, and from "X" to "A" the divisionary line between the City of Manila and the Province of Rizal.

Parcel "I."—Situated in Santa Mesa high-road, barrio of San Isidro. Bounded on the N. E. and S. E. by lands of the Santa Mesa Estate, and S. W. by the Santa Mesa high-road. Beginning at a point marked "A" on plan, and on the ground by a stone monument, being N. 88 55′ E., four hundred twenty-five meters (425) from the boundary monument No. 29 of the City of Manila; and from this point "A" N. 18° W., seventy-two meters and fourteen centimeters (72.14) to point "B"; thence S. 50° E., eighty-four meters and five centimeters (84.05) to point "C"; thence S. 68° 45′ W., forty meters and seventy-five centimeters (40.75) to the point of beginning; containing one thousand four hundred and forty-eight square meters and eighty-one square centimeters (1,448.81 sq. m.). Line from point "A" to "B" follows the N. E. side of the Santa Mesa high-road. All point- referred to in the described four parcels are marked on plan; bearings magnetic; date of survey, April and May, 1906.

47 Therefore, it is ordered and decreed that the estate in question be registered, in accordance with the Land Registration Act, in the name of said Benito Legarda, subject, however, to any lien, which may be subsisting and to the encumbrances referred to in Section 39 of said Act, and to * * *

Given by the Hon. W. L. Goldsborough, Judge-at-Large of the said Court of Land Registration, in Manila the 9th day of August, 1907, at ten o'clock a. m.

To which I certify:

[Seal of the Court.]

(Sgd.) A. K. JONES,
Clerk of Court.

A true copy which I hereby certify.

Issued this 7th day of September, 1908.

____ ____,
Clerk of Court.

(Copy.)

On the 10th day of April, 1912, the plaintiff presented the following amendment to the complaint:

48 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Case No. 9436.

W. BORCK, Plaintiff,

vs.

BENITO LEGARDA and BENITO VALDEZ, Defendants.

Comes now the plaintiff in the above-entitled case, and, by leave of the court first had, amends the petition on file herein in the following manner, to-wit:

1. By adding at the end of Paragraph 4 the following words: "Which said option to purchase was contained in a private document and was in words and figures substantially as follows:

Manila, December 4, 1911.

Mr. W. Borck, Real Estate Agent, Manila, P. I.

SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 meters of land, for the price of its assessed government valuation.

(Sgd.) B. VALDES."

49 2. By changing Paragraph 1 of the prayer to read as follows:

"1. That the defendant Valdez be ordered and directed to execute whatever formal documents may be necessary in evidence of the contract or obligation referred to in this petition and to embody same in a proper public document, and that thereupon the defendant Legarda either directly or by hand of the defendant Valdez be ordered and directed to convey to the plaintiff by good and sufficient warranty deed the said hacienda de Nagtahan as described in this petition, in fee simple."

Manila, April 10, 1912.

(Sgd.) THOS. D. AITKEN,
(Sgd.) HARTFORD BEAUMONT,
Attorneys for Plaintiff.

On March 27, 1912, the following was filed by the plaintiff in this case:

50 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Case No. 9436.

W. BORCK, Plaintiff,

vs.

BENITO LEGARDA, Defendant.

Affidavit.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila, ss:

Walter Borck, being first duly sworn on oath, deposes and says:

That he is the plaintiff in the above-entitled case;

That the defendant Legarda has given a six month's option subsequent in date to the option sued upon, given to the plaintiff, to Maurice Lowentien and threatens to sell to the said Lowenstien under said option all the property in controversy.

That the defendant Benito Valdez, acting under the power of attorney set out as Exhibit "A" of the petition in this case,
51 is occupied almost daily in making leases of parcels of land comprised within the limits of the estate in controversy. That these leases are for various periods and on various terms, and plaintiff fears that, unless restrained by order of the Court, the said defendant may lease, encumber or convey the estate or a valuable portion thereof to innocent third parties to the prejudice and irreparable damage of the plaintiff.

(Sgd.) W. BORCK, *Plaintiff.*

Subscribed and sworn to before me this 27th day of March, 1912, by W. Borck, who first exhibited to me his cedula No. 28257, issued at Manila, March 11, 1911.

[Seal of the Notary Public.]

(Sgd.) HARTFORD BEAUMONT,
Notary Public.

My commission expires December 31, 1912.

Reg. No. 400, Page No. 79.

Filed on the 27th day of March, 1912, at 4:30 p. m. (Sgd.) J. McMicking, Clerk.

52 On the 19th day of April, 1912, the defendant Hon. Benito Legarda filed the following demurrer to the complaint:

Heading and Title.

Now comes the defendant Benito Legarda, by the undersigned attorney, and demurs — the plaintiff's complaint filed in the above-entitled cause, as amended by said plaintiff on April 10, 1912, on the following ground:

That the facts alleged in the complaint do not constitute a cause of action against this defendant.

Wherefore, this defendant prays the Court to dismiss the complaint as regards to him, with costs against the plaintiff.

Manila, P. I., April 18, 1912.

(Sgd.) ARISTON ESTRADA,
Attorney for Benito Legarda.

No. 83 Palacio, Walled City, Manila, P. I.

Received copy this 18th day of April, 1912.

(Sgd.) HARTFORD BEAUMONT,
Per CHAS. C. TENNEY,
Attorney for Plaintiff.

53 On June 26, 1916, the Court issued an order overruling the demurrer filed by the defendant Benito Legarda.

(Heading and Title.)

Order.

This case is before the Court for the hearing of the demurrer filed by the defendant Benito Legarda to the plaintiff's complaint.

Mr. A. Estrada appeared to maintain the demurrer and Messrs. Hartford Beaumont and Thos. D. Aitken to appose the same.

The grounds of the demurrer are as follows: that the complaint does not state facts enough to constitute a cause of action. The complaint is for recovery of damages cause- by the defendant's failure to fulfil the terms of an option for the sale of estate described in the complaint. The complaint alleges that the plaintiff offered to pay the option as soon as the title deeds can be examined within a reasonable time. The acceptance of an option is alternative and cannot necessarily be the ground of a complaint for damages on account of a failure to fulfil the option. The complaint contains, however, some other allegations, to wit, that the plaintiff was, and is at present, ready to carry out the option, but the defendant has refuse- to do so. I have some doubt as to the sufficiency of
54 the complaint. A demurrer filed by the other defendant to the complaint has heretofore been overruled by Hon. Charles S. Lobingier who was presiding over Sala II to which the

case properly belongs, though it seems that the question as to the sufficiency of the complaint has never been considered.

The demurrer is overruled.

So ordered.

Manila, P. I., June 26, 1912.

(Sgd.) A. S. CROSSFIELD, *Judge.*

On the 22nd day of June, 1912, the Court entered the following order:

(Heading and Title.)

Order.

This case is before the Court for the hearing of a petition requesting that Hartford Beaumont be substituted for the plaintiff in the present case.

It appearing that the plaintiff has filed in other proceedings a petition for bankruptcy proceedings in accordance with the law; and that the claim, which is the basis of the present action, has been transferred in such proceedings and by agreement of all the
55 creditor- said Hartford Beaumont was appointed trustee and has qualified as such,

It is ordered that said Hartford Beaumont be substituted for the plaintiff who will heretofore appear in the present case and in further proceedings.

Manila, P. I., June 22, 1912.

(Sgd.) A. S. CROSSFIELD, *Judge.*

On the 3rd day of July, 1912, the defendant Benito Legarda filed the following answer and especial defense:

(Heading and Title.)

Comes now the defendant Benito Legarda, by the undersigned attorney, and, to the plaintiff's complaint, alleges:

As an Answer.

That he denies all and every allegations contain- in pages 3 to 12, inclusive, of the complaint, save those which are expressly admitted hereafter by this defendant.

And as an Special Defense.

1. That though his codefendant, Benito Valdes, was his attorney-in-fact, the latter had received instructions not to give any
56 option on the Hacienda in question without the knowledge and consent of the deponent.

2. That on and before the 4th of December, 1911, the plaintiff knew and had known the extent and scope of the powers conferred upon the defendant Benito Valdes.

3. That the defendant Valdes, in giving the option which the plaintiff alleges to have been given to him, has done so without the knowledge and consent of the deponent, and has violated the instructions given to him by the deponent.

4. That the said deponent, upon knowing that said option which it is alleged had been given to the plaintiff, did not approve and rejected the same.

5. That the deponent has information and, therefore, alleges it as a true, that the option which it is alleged has been given to the plaintiff, had been obtained through false and malicious interpretation of the substance of the letter dated December 4, 1911, and that the said plaintiff, taking advantage of such interpretation, induced the defendant Valdes to sign it.

6. That the option which it is alleged had been offered to the plaintiff has never — legally accepted by the deponent.

7. That on and after January 19, 1912, on which day, according to the plaintiff, he offered to pay for the Nagtahan Hacienda
57 to the codefendant Valdes its assessed value, said plaintiff was already and is at present insolvent.

Manila, July 2, 1912.

(Sgd.) ARISTON ESTRADA,
Attorney for Mr. B. Legarda.

No. 83 Palacio, Walled City, Manila, P. I.

After hearing the parties in the present case, the Hon. Charles S. Lobingier, Judge of the Court of First Instance of Manila, rendered the following decision on February 12, 1913:

58 UNITED STATES OF AMERICA,
Philippine Islands:

Manila, February 12, 1913.

In the Court of First Instance for the Judicial District of Manila.

(9436.)

W. BORCK, Substituted by HARTFORD BEAUMONT, Plaintiff,

versus

BENITO LEGARDA et al., Defendants.

Syllabus.

1. An instrument signed by an attorney in fact, with power to convey real estate, and reciting "I herewith give you an option for three months to buy the property of" the principal for a certain sum, becomes, when confirmed within said period, a contract to convey.

2. Under Code of Civil Procedure, section 347, a written confirmation of such instrument constitutes a sufficient tender of performance.

3. Such instrument being incomplete in failing to disclose the attorney's authority, reference to the power previously executed is no infringement of the parol evidence rule.

4. But such rule is infringed by an attempt to contradict the plain terms of such instrument and to show the existence of con-
59 ditions inconsistent with its recitals, as e. g., that it shall not become effective until submitted to the principal, or that the consideration shall be paid forthwith.

5. For while incomplete provisions of a written instrument may be supplemented, and ambiguous ones explained, express recitals cannot be contradicted.

6. A party sui juris to a written instrument who signs it voluntarily after reading, or having an opportunity to read, the same, cannot be heard to complain that he is ignorant of its terms.

7. An acceptance does not become conditional merely by requiring the exhibition of title papers relating to the subject matter.

8. Failure to perform after tender entitles the contractee to a decree of specific performance, which is as well established in the Spanish, as in the English, law.

Mr. T. D. Aitken and Mr. Hartford Beaumont, for the Plaintiff.

Messrs. Hausserman, Cohn & Fisher, by Mr. Cohn, for Defendant Benito Legarda.

Messrs. Escaler & Salas, and Messrs. Singson, Ledesma & Lim, by Mr. Escaler, for Defendant Benito Valdez.

60 *Decision.*

This is an action for the specific performance of a contract to convey certain real estate in the City of Manila, of which defendant Legarda is the owner. On December 20, 1907, said defendant executed a public document constituting a power of attorney, authorizing his co-defendant, inter alia:

"Comprar, vender, permutar, ceder o admitir en pago o por vía de compensación o de otra manera adquirir o traspasar toda clase de bienes, muebles, semosientes, inmuebles, géneros, frutos, mercancías, efectos, derechos y acciones por los precios y con las condiciones que estimen; percibiendo o satisfaciendo el importe por adelantado, al contado o a plazos, dando o recibiendo las cosas que fueren objeto de cesión o permuta, otorgando las correspondientes escrituras de adquisición o traspaso, obteniendo de ellas copias o testimonios y

solicitando la inscripción de los inmuebles en el Registro de la Propiedad que corresponda."[1]

The revocation of this power could be affected only by recalling the old instrument (Civil Code, Art. 1733) or appointing a new agent (Art. 1735), and it is not claimed that either of these modes was ever sought to be pursued. An attempt is made to show certain inconsistent verbal instructions, but even if such evidence were admissible, the public document could not *this* be revoked or contradicted.

61 On December 4, 1911, the last named defendant executed and delivered to plaintiff herein the following instrument:

In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtajan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed government valuation. (Exh. E.)

There is some discussion in the briefs as to whether this instrument constituted a mere offer to sell or an actual contract of option. In terms it purports to be the latter, and in fact recites the acceptance of a "request" or offer, by the plaintiff. But viewing the instrument as in itself no more than an offer it was at least a continuing one, "for three months" and as it is not claimed to have been withdrawn during that period, the plaintiff could, at any time within that limit, enter into an actual contract, if it were not such already, by mere acceptance.[2]

Counsel for defendant Legarda contends (p. 11) that "there has never been an acceptance." It appears, however, that on January 19, 1912, plaintiff executed and delivered[3] the following letter (Exhibit G):

62 I hereby advise you that I am ready to purchase the hacienda Nagtajan, situated in the districts of Sampaloc and Nagtajan, Manila, and in the Province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March, 1912, provided all documents in connection with the hacienda Nagtajan, as Torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection, and if such papers have been found in good order.

This letter is characterized as "a counter offer," and Civil Code

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[1]Exh. A, attached to complaint, not denied under oath in either answer and therefore admitted as to its "genuineness and due execution." (Code C. P., sec. 103; Merchant vs. International Banking Corp., 6 Phil. Rep., 314.)

[2]Civil Code, art. 1262; Anson on Contracts, 34; 9 Cyc., 286.

[3]This letter was produced, among others, by defendant Valdez at the trial, as one which he had received from plaintiff (Evidence, pp. 14-15).

Art. 1500 cited in support of the contention that cash payment should have been provided for. But that article merely requires the purchaser "a pagar el precio de la cosa vendida en el tiempo y lugar fijados por el contrato." Now, the first instrument (Exh. E) gave plaintiff "three months to buy the property" dating from December 4, 1911, and consequently expiring on March 4, 1912. This necessarily allowed the plaintiff until the last named date for payment, and as his letter (Exh. G) provides for payment before the expiration of said period, it in no way modifies or changes the option, but coincides therewith. A payment on or before March 4, 1912, would have been a "cash payment" even had Exh. E required such.

Nor does plaintiff seem to have intended or effected a modification or counter proposal by merely requiring that the title papers "be immediately placed at my disposal for inspection." The evidence (p. 51, Exh. P) shows that this was really the requirement of a prospective purchaser (if not also that of defendant Valdez
63 himself (pp. 32, 33)) who was ready to pay plaintiff an advance of ₱73,000, and it seems to be one which both the latter and plaintiff had a right to insist upon. As counsel himself concedes, "an acceptance of an offer for real property implies as a necessary condition the transfer of a good title." But surely the purchaser is entitled to determine whether this condition has been complied with before he proceeds to final performance. The implied condition of giving good title includes necessarily the right to inspect the title papers, and the fact that plaintiff may have had information from other parties on the same subject did not, in our opinion, deprive him of such right. It may be that plaintiff could have secured the desired information from the registry or from private parties, but we do not think that he was obliged to deny himself the benefit of sources which the vendor might, and ordinarily does, provide. Besides, the mention of "leases" indicates that plaintiff may have thought there were some papers relating to the property which had not been registered. He had the right not only to a "good" title, but also to a clear one, free of all incumbrance.

Four days after the date of Exhibit G, plaintiff wrote the following letter (Exh. J):

I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagtajan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) Pesos, Ph. C., ten days after the Torrens
64 title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and those documents and papers have been found in good order.

Counsel objects:

That there is naught in the record to disclose that said letter was received by the defendants or either of them within the time limited in said offer.

But defendant Valdez was interrogated regarding this letter (p. 15) and did not deny having received it, altho given that opportunity. As the letter was written at least as early as its date (p. 31) which was some six weeks before the expiration of the option, it

seems a fair inference that if defendant Valdez had not received it within said period, he would have so stated, specifically.

However, proof on that point hardly seems essential, since, as we have seen, Exhibit G appears to contain all the elements of an acceptance. We certainly cannot agree with counsel that it was in any sense a "rejection." The most that can be said of Exhibit J is that it proposes terms even more favorable than the option itself, and of this defendants cannot complain, nor had they, at the time of receiving it, withdrawn the option or refused to perform.

But it is contended that even if the option of offer of December 4, 1911, were actually accepted by plaintiff, it "is the contract of Benito Valdez * * * and of no other person," and the parol evidence rule embodied into Code C. P., sec. 285, is invoked for this contention. That section, however, expressly admits "other evi-
65 dence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity." Now, the said instrument is clearly one which cannot be interpreted without knowledge of such "circumstances." The signer of it agrees to sell not his own property, but another's, and this he could do only by virtue of matters appearing aliunde, to-wit: in the power of attorney (Exh. A). Without such extrinsic evidence, Exhibit E is clearly incomplete, if not also ambiguous, as regards the identity of the person charged and the amount to be paid (assessed value), but not as regards any other matter. Section 285 does not, therefore, exclude evidence as to the agent's authority[4] for that is left unexplained, but it does exclude other evidence that the option was not to become effective, until first submitted to the principal, or that the price was to be paid at once, for on that point the instrument is not ambiguous, but clear and positive in stating "I herewith give you an option for three months" and to admit such other evidence would contradict and nullify its express recitals.[5]

66 Even less applicable seems section 335 of the same Code, which expressly recognizes a "note or memorandum * * * subscribed by the party * * * or by his agent[6]." To interpolate after this phrase the words "in his own name" would be judicial legislation.

Civil Code Article 1717 expressly excepts "el caso en que se trata de cosas propias del mandante." As it is conceded that the property in question is that of the principal, this exception clearly includes the present case.

As to the objection to the joinder of the agent, we may repeat here what was said in overruling his demurrer, that:

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[4]Curran vs. Holland, 141 Cal., 437, decided under a Code from which section 285 is taken; Tan Machan vs. Trinidad, 3 Phil. Rep., 686; Allen vs. Pink, 4 M. & W., 140; Thayer's Cas. on Ev., 830.

[5]To Poel vs. Shutt, 57 Neb., 592, 600, a case in many features like this. Cf. Naumberg vs. Young, 44 N. J. L., 331; Thayer's Cases on Ev., 849.

[6]Cf. Cock vs. Bringier, 19 La. Ann., 183; Paul vs. Lauderdale, 46 N. Y., 70.

He may not be an entirely necessary party, tho only the trial can determine that, but if he is only a proper party, plaintiff has a right to have him in court, in order that any interest which he may have may be adjudicated in one action.

We think the trial discloses that either the principal or the agent may be compelled to execute the conveyance, but even if the latter's joinder were improper, that would not relieve the principal of liability.

Paragraphs 4 and 5 of the complaint, quoted in defendant Legarda's brief, must be read in connection with the amendment (rec. p. 76) and paragraphs 2 and 3, which distinctly allege his ownership of the property and his co-defendant's authority to act. These
67 aver*n*ments, followed as they are by another to the effect that the agent executed the instrument which now appears as Exhibit E, and which discloses on its face that the said agent undertakes to convey property of the principal, seem to constitute a sufficient statement of a cause of action against the latter.

It being conceded that defendant Valdez executed Exhibit A voluntarily, he could not now be heard to say that he did so ignorantly.[7] If he really did not understand English, or if he desired to impose the condition that his principal should first be consulted, he should not have signed the instrument. We must find, however, that the evidence, (pp. 27, 45, 52, 53, 57, 58, 60, 74, 75) is sufficient to show that he did sign it understandingly.

The objection that there has been no breach of the contract because plaintiff has failed to present an "offer in writing," which is made the equivalent of actual tender by Code Civ. Proc. section 347, repeats in different form the contention that plaintiff's acceptance was insufficient, and what we have said as regards Exhibit G
68 applies. That letter contained "an offer to pay a particular sum of money," to-wit: ₱307,000, for the property in question, and as the latter has never been conveyed, it follows that the contract is broken.

II.

Under Civil Code, Article 1124, plaintiff had the option to seek rescission or performance, with indemnity. He has elected the latter remedy, but we do not think he has established a right to recover as damages more than the property itself, and its net income, if any, since the date of tender (Jan. 19, 1912); unless for some

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[7] Kennedy vs. Phosphate Co., 52 Am. Rep., 669; Banfield vs. Banfield, 24 Oreg., 571; Grieve vs. Grieve, 15 Wyo., 358; Robinson vs. Glass, 94 Ind., 211. In Clack vs. Wood, 14 Tex. Civ. App., 400, the Court, in denying reformation, said:

"Ignorance of the contents of the instrument in question on the part of Blackmore, according to his own testimony, was due to inattention and the failure to read it. See the able opinion of Justice Head in Williams vs. Rand, 9 Tex. Civ. App., 631, and the authorities there cited."

reason a conveyance has now been rendered impossible, in which event plaintiff would at least be entitled to recover the profit of ₱73,000 which the undisputed evidence (p. 51, Exh. P) shows he would have made under timely performance. We find no proof that a substantially similar price could not be realized now, and without such proof, that profit must be treated as the rightful alternative to specific performance, tho not as absolute damages.

The claim of damages on the ground that the breach of the contract caused plaintiff's insolvency, appears untenable, by virtue of Civil Code Article 1107, for such result could hardly have been foreseen by the defendants. As to loss of time, that was incidental to a transaction of this magnitude, which even had defendants performed would have required a large amount of plaintiff's
69 time and attention. We do not think that defendants could be charged for that item, more than for attorney's fees.

But the principal relief sought in this action is not damages, but specific performance, and as the subject matter is real property, plaintiff is entitled to that relief, since, as we have found, he has a valid contract. For the remedy of specific performance, tho well known in the English law[8] is not peculiar to that system. It has a well established place in the Spanish law, having been recognized as early as the Forum Judicum[9] carried into the present Civil Code[10], and applied by the Spanish Supreme Tribunal[11] and by the Supreme Court of the Philippines[12].

To recapitulate, we find from the evidence:

(1). That the instrument Exhibit E, as supported by Exhibit A, and confirmed by Exhibit G, constitutes a contract by the principal defendant to convey the plaintiff the property therein described.

(2). That plaintiff made a sufficient tender of performance
70 on his part, in accordance with Code of Civil Procedure, section 347.

(3). That the defendants have failed to execute such convevance in accordance with said contract, and that plaintiff is entitled to the specific performance thereof, and to the net income, if any, therefrom since January 19, 1912, but that he has not shown sufficient loss otherwise to entitle him to additional damages unless it subsequently appear that a conveyance cannot be made.

It is accordingly considered and decreed that upon the payment by the plaintiff to the principal defendant, Benito Legarda, or to the Clerk of this Court, of the sum of Three Hundred and seven Thousand pesos, the said defendant, or his co-defendant and attorney

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[8]See appellee's brief in Te Poel vs. Shutt, 57 Neb., 595.

[9]"He who receives earnest money for the sale of anything, can be forced to fulfill his contract." (Book V, Title IV, Law IV.)

[10]Arts. 1124, 1279, 1451. Cf. Code of Civ. Proc., section 90 (3), and 784 (30).

[11]Sentence of November 19, 1891.

[12]Goyena vs. Tambunting, 1 Phil. Rep., 490; Tabigue vs. Green, 11 Phil. Rep., 102; Doliendo vs. Depiño, 12 Phil. Rep. 758.

in fact, shall execute and deliver to said plaintiff a good and sufficient conveyance, free of all incumbrance, of the property described in Exhibits B and C, attached to plaintiff's complaint, so far as the same is included within the terms of Exhibit E; and that upon said defendants' failure to execute such conveyance within a reasonable time after such payment, the Clerk of this Court shall execute one, and the same, together with this decree, shall constitute such a conveyance; but if for any sufficient reason such conveyance cannot now be made, plaintiff shall have and recover from defendant Legarda, as alternative damages, the sum of Seventy three thousand (₱73,000.00) Pesos, with interest thereon at 6% per annum from March 13, 1912.

71 Defendants are further decreed to render an accounting within thirty days of the income and profits of said property since January 19, 1912, and to pay the costs of this proceeding.

By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., February 12, 1913.

On the 15th day of February, 1913, the defendant Benito Legarda filed the following exception to the preceding decision.

(Heading and Title.)

Now comes the defendant Benito Legarda, through his attorneys, in the above-entitled case, and respectfully excepts to the decision rendered in the case, under date of February 12, 1913, and requests that same be set aside and the new trial be had on the following grounds:

1. Because the evidence does not justify sufficiently the decision of the Court;

2. Because said decision is contrary to the law; and

72 3. Because the findings set out in the decision are openly and manifestly contrary to the weight of evidence.

Manila, February 14, 1913.

HAUSSERMANN, COHN & FISHER,

(Sgd.) By CHARLES C. COHN,

Attorneys for Defendant
Mr. Benito Legarda.

After hearing the preceding motion, the Court rendered the following resolution on April 23, 1913:

73 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Branch II.

Civil Cause No. 9436.

WALTER BORCK, Substituted by HARTFORD BEAUMONT, Plaintiff,

versus

BENITO LEGARDA et al., Defendants.

Order.

For the sake of clearness and logical arrangement, we shall consider defendants' objections to the decision in the order in which the points objected to appear in the decision itself, so that the latter may be considered more intelligently in connection herewith.

(1). "The Court erred in holding that it is conceded that the property in question is that of the principal. * * * The allegation that the property in question belongs to the defendant Legarda is denied in the answer." (Objection 9.)

But where is such denial? Defendant Legarda denies only "párrafos 3 al 12, ambos inclusive, de la demanda," and de-
74 fendant Valdez denies even less, to-wit: "párrafos 4 al 12." But paragraph 2, which is not denied by either, alleges:

"Que el demandado Benito Legarda es el dueño absoluto de la Hacienda de Nagtajan, que más adelante aqui se describe."

It might be added that even if this averment had been denied, the record[1] shows the ownership of defendant Legarda, and that had it been otherwise, he would hardly have defended the case at all, but would have filed a disclaimer, and would surely not have urged as a defense that the option was not submitted to him.

(2). "The Court erred in considering in evidence the power of attorney from Benito Legarda in favor of Benito Valdez. The decision refers to this document as an exhibit in the case under the title of 'Exhibit A.'" (Objection 7.)

On the contrary, the decision refers to it as

"Exhibit A, attached to complaint, not denied under oath in either answer, and therefore admitted as to its 'genuineness and due execution.' (Code C. P. sec. 103; Merchant vs. International Banking Corp., 6 Phil. Rep., 314.)"

We can hardly believe this statement ambiguous or that counsel understood us to mean "Exhibit A" of the evidence.

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[1] P. 2, and Exhibit A of the evidence; Exhibits B and C, attached to the complaint.

The objection continues:

75 "The power of attorney attached to the complaint as an exhibit thereto, is not here in evidence, having never been offered nor admitted in evidence."

Would counsel have us ignore Code C. P. section 103, and render judgment without "considering" the pleadings?

However, the question is academic, because defendant Valdez expressly states (pp. 2, 15, 16, 18) that he does hold such power of attorney.

(3). "The Court erred in holding that the alleged offer (Exhibit E) was open for acceptance on January 19, 1912. * * * Exhibit F, one of the most important items of the documentary evidence, has been wholly ignored." (Objection 3.)

And why should it not be "wholly ignored," after counsel for both defendants had prevented its admission in evidence? Not only did they fail to offer it themselves, but when it was offered by plaintiff, together with other exhibits, they objected (p. 23) and later renewed their objection (p. 65).

"On the ground that they are incompetent, immaterial, and irrelevant."

Ruling on this objection was reserved until we could scrutinize each proffered exhibit (which was impracticable in the midst of the trial), and when we did so, we found that Exhibit F was unsigned,[2] and unauthenticated, and bound no one; that no finding 76 could be based thereon, either for or against the plaintiff (because even if he had actually delivered it, no rights or liabilities could arise therefrom), and that it was consequently inadmissible. Since it had never been received in evidence, we did not consider formal exclusion necessary, but to save any further misunderstanding, we now formally sustain defendants' objections. They cannot consistently complain of this, and plaintiff has not sought to.

But even if we could have considered this unsigned paper, we do not think our conclusions should have been different. For if plaintiff had signed and delivered such a paper, it would have constituted neither a conditional acceptance nor a counter offer, but an independent proposal. Counsel apparently overlooks the distinction between these two classes of negotiations. At any rate, all of his authorities construe the former; they are cases where the vendee answered the offer directly but in doing so imposed other terms than those of the offer. But in the leading case[3] relied upon by counsel, the distinction is thus drawn between such answers and a paper like Exhibit F:

"The mention, in both telegram and letter, of the date and the terms of the defendant's original offer, shows that the plaintiff's

[2]As copied in counsel's brief (p. 5) it appears to be signed, but the original is not.

[3]Minn. Co. vs. Columbus Co., 119 U. S., 149, 30 Law. Ed., 376.

order was not an independent proposal, but an answer to the defendant's offer, a qualified acceptance of that offer, varying the number of tons, and therefore in law a rejection of the offer."

77 Now, Exhibit F does not purport to be anything more than "an independent proposal;" it makes no reference to the option at all, and mentions no previous offer, but on the contrary reads as if it were the first offer made during the negotiation. Besides, it had not been rejected when Exhibit G, the final acceptance, was delivered, and in another[4] of counsel's authorities, the Court "Would not say that a person might not accept an offer with qualifications upon one day, and upon the next day, and before his counter proposition is rejected, accept unconditionally."

But, the Civil Law, (under which this question of substantive law would have to be decided were it actually before us upon competent evidence) seems to be less liberal to the proposer than the Anglo-American law to which alone defendant's counsel resorts. Under the Civil Law[5] the proposer seems to have merely the right to withdraw in case of conditional acceptance or counter offer. Thus Manresa[6] says that "una nueva proposición (i. e. counter-offer) deja el contrato en esta de proyecto," and we have been cited to no Civil Law authorities nor have we been able to find any which

78 treats it as a rejection ipso facto. It is undisputed here (p. 39) that the option never was withdrawn, so that even the question of the right to withdraw is purely academic.

(4) "The Court erred in holding that Exhibits G, J, and K were acceptances of an offer absolute, and not conditional." (Objection 5.)

"The Court erred in finding that the plaintiff merely required that the title papers 'be immediately placed at my disposal for inspection.' * * * Compare his letter of two days before (Exhibit F) wherein he calls for the 'delivery of a Torrens Title free of all encumbrances as taxes and other debts.' This letter is a requirement for the conveyance of a good title. The proviso of Exhibits G, J, and K is not." (Objection 4.)

We are unable to see any substantial difference between the demand for a "title free of all encumbrances, as taxes and other debts" and one for "all documents in connection with the hacienda Nagtajan, as deed, contract of leases and other matters" in order to be certain that he was getting such title. Surely the right to demand the title included the right to ascertain if the demand has been complied with, for otherwise the right would be worthless. "Leases and other matters" (to which so much objection is now raised) "in connection with the hacienda" might seriously interfere with plaintiff's enjoyment of the title. For even an unrecorded

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[4]Ortman vs. Weaver, 11 Fed. Rep. 361.

[5]Spanish Civil Code, Art. 1262; Manresa's Gloss of same VIII, 598-600; Sanchez Roman, Gloss, IV, 241; Cf. Louisiana Civil Code, Art. 1805, last phrase.

[6]Commentaries, VIII, 599.

lease gives the lessee some rights[7], and plaintiff was not obliged
79 to buy a lawsuit with possible holders of such a lease. And the record contains indications at least, that this was no mere possibility. Plaintiff's affidavit of March 27, 1912 (less than four weeks after the option expired) and which we do not find anywhere controverted, recites (p. 40):

"That the defendant, Benito Valdez, acting under the power of attorney set out as Exhibit A of the petition in his case, is occupied almost daily in making leases of parcels of land comprised within the limits of the estate in controversy. That these leases are for various periods and on various terms, and plaintiff fears that, unless restrained by order of the Court, the said defendant may lease, encumber or convey the estate or a valuable portion thereof to innocent third parties to the prejudice and irreparable damage of the plaintiff."

We think that a fair interpretation of Exhibits G, J, and K shows nothing more than an intention to require a marketable title, such as his then waiting purchaser would accept. (Ev., p. 51, Exh. O, P.)

Now the right to receive such a title was just as much a part of the option as if defendants had inserted it there.

"In every contract for the sale of lands there is an implied agreement on the part of the vendor to make good title for the lands to the vendee."[8]

80 "An agreement to sell at a sound price, without reservation or exception, implies that a marketable title free of incumbrances will be passed to the vendee upon compliance with his obligations."[9]

It will hardly be claimed that a request for the inspection of "leases and other matters * * * in connection with the hacienda" constitute more of a condition than an acceptance "subject

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[7]"El arrendatario podrá exigir que se le deje recoger los frutos de la cosecha que corresponda al año agrícola corriente y que el vendedor le indemnice los daños y per juicios que se le causen." (Código Civil Español, Art. 1571.)

Moreover, the lease might validly eliminate the purchaser's right to terminate it. (Id.)

[8]Meyer vs. Madreperla, 68 N. J. L., 258, 96 Am. St. Rep., 536 (citing Lounsbery vs. Locander, 25 N. J. Eq., 554). Cf. Ryder vs. Johnson, 153 Ala., 482, 45 So., 181.

"Nor is an acceptance conditional or variant from the offer where it contains a term or condition which is a mere reiteration of one expressed or implied by law in the offer." (39 Cyc., 1199, 1200.)

[9]Curtis Co. vs. Interior Co., 137 Wis., 341, 347, citing Young vs. Wright, 4 Wis., 144; Wright vs. Young, 6 Wis., 127; Bateman vs. Johnson, 10 Wis., 1, 3; Arentson vs. Moreland, 122 Wis., 167, 175; Davis vs. Henderson, 17 Wis., 105, 107; Taft vs. Kessel, 16 Wis., 273, 277; Drake vs. Barton, 18 Minn., 462; Dwight vs. Cutler, 3 Mich., 566; Sibbley vs. Spring, 12 Me., 460; Hill vs. Hobart, 16 Me., 164; Shreck vs. Pierce, 3 Iowa, 350; Bartle vs. Curtis, 68 Iowa, 202;

to the title being approved by my solicitor"[10] or even than a demand to "take care of delinquent taxes;" yet these have been held insufficient to deprive an acceptance of its unconditional character.

81 (5). "The Court erred in deciding that the offer (Exh. E) 'necessarily allowed the plaintiff until the last named date (viz., March 4, 1912) for payment.'" (Objection 1.)

"The Court erred in holding that a payment on or before March 4, 1912, would have been a cash payment." (Objection 2.)

"The Court erred in holding that an instrument reading 'I herewith give you an option for three months' is a conclusive grant of terms of payment, negativing Art. 1500, Civil Code, and excluding evidence that the price was to be paid at once." (Objection 8.)

If we understand counsel's theory of the option, it is that defendant really said to plaintiff: "I hereby give you an option for three months, but you must pay me at once." Where, then, did plaintiff get his "option for three months"? We must remember that under counsel's theory the slightest variation in terms between the acceptance and the option constituted a "rejection" of the latter, and that it could be withdrawn at any time. If in addition plaintiff was obliged to pay cash at the moment of acceptance the phrase "for three months" was only a delicious bit of humor inserted in order to delude plaintiff and perpetrate a practical joke upon him. For on the one hand he would need to hasten his acceptance lest the option be withdrawn—or declared rejected; on the other hand, the moment he accepted he lost the option unless he paid. In either event the "three months" meant nothing, and between the Scylla and Charybdis thus created the supposed contract becomes a will-o'-the-wisp.

McGuire Bros. vs. Blanchard, 107 Iowa, 490; Swan vs. Drury, 22 Pick., 485; Van Epa vs. Schnectady, 12 Johns, 436, 442; Dearth vs. Williamson, 2 Serg. & R., 498; Swayne vs. Lyon, 67 Pa. St., 436.

"A Good Title Means not merely a title valid in fact, but a marketable title which can be sold or mortgaged to a person of reasonable prudence: Moore vs. Williams, 115 N. Y., 586, 12 Am. St. Rep., 844. A marketable title is one free from reasonable doubt: Vought vs. Williams, 120 N. Y., 253, 17 Am. St. Rep., 634; Hedderly vs. Johnson, 42 Minn., 443, 18 Am. St. Rep., 521. See also Mathews vs. Lightener, 85 Minn., 333, 89 Am. St. Rep., 558; Barnard vs. Brown, 112 Mich., 452, 67 Am. St. Rep., —; Sims vs. McElroy, 160 N. Y., 156, 73 Am. St. Rep., 673; Simon vs. Vandeveer, 155 N. Y., 377, 63 Am. St. Rep., 683." (Note to 96 Am. St. Rep., 545.)

[10]Hussey vs. Horne-Payne, 4 App. *Gas.* (Eng.), 311, where in the House of Lords, disapproving a different construction below, the Lord Chancellor (Cairns) said: "I am disposed to look upon the words as meaning nothing more than a guard against its being supposed that the title was to be accepted without investigation, as meaning in fact the title must be investigated and approved of in the usual way, which would be by the solicitor of the purchaser."

[11]Curtis Co. vs. Interior Co., 137 Wis., 341.

82 We cannot assume that either party intended to participate in such a hollow farce. It is our duty so to construe contracts as to make the parties mean what they say, and when one of them gives an "option for three months" we must understand him to allow that full period in which to comply with the option or in other words to pay the price. If plaintiff had tendered no acceptance of any kind until March 4, and the option had not meanwhile been revoked, will anyone deny that a contract would have resulted? And was it any less advantageous to defendant for plaintiff to accept on January 19, at the same time availing himself of the balance of the "three months" for payment?

Plaintiff testifies (p. 27) that defendant Valdez, before signing the option, said:

"I don't want you to put in the assessed valuation, in figures, because you have three months' option, and in that three months the Government might raise or lower the assessment." (Cf. p. 29.)

This is quite in accord with the previous conduct of said defendant; and that he, as well as plaintiff, intended that the latter should have three full months in which to make payments is further demonstrated by the original option (Exh. A), written by said defendant himself, after corresponding with his co-defendant (p. 24), nearly a year before he executed Exhibit E, and in which he says, inter alia:

"Concedo a Vd. la oportunidad de hacer efectiva dicha compra en el plazo de TRES MESES."

83 The last two words are capitalized in the original, and it thus unmistakably appears that this feature of the contract originated with defendant, being merely carried over into the new option (Exh. E) and that he intended to allow the whole period, not merely the acceptance, but "hacer efectiva dicha compra"—i. e., to carry out all of its details, including payment.

We are convinced, therefore, that the interpretation *embodied* in our previous finding, to the effect that plaintiff was given the entire "three months" to make payment, is the only one justified by the language of the option, the contemporaneous conduct of the parties, and the surrounding circumstances. Incidentally, this disposes of objection 6 to our finding (p. 5) that "Exhibit J * * * proposes terms even more favorable than the option itself" of which defendants cannot complain. It also renders inapplicable paragraph 2 of Civil Code Art. 1500, relating to contracts where the time is not fixed. Here, as we construe it, the time was fixed for any date within the "three months."

(6). "The Court erred in holding that the words 'el caso en que se trata de cosas propias del mandante' is an exception which excludes the present case from the application of article 1717, Civil Code. Article 1717 provides that:

'When an agent acts in his own name, the principal shall have no action against the persons with whom the agent has contracted, nor said persons against the principal.

'In such case, the agent is directly liable to the person with whom

he has contracted, as if the transaction were his own. The case involving things belonging to the principal is excepted.'

84 "The exception to which the Court has referred has application to the second proviso of the article and not to the first." (Objection 10.)

Well, suppose we apply it to the second "proviso" (paragraph?) only. Clearly that means that in "the case involving things belonging to the principal * * * the agent is not directly liable to the person with whom he has contracted;" and as there must be a responsible party it is necessarily the principal here, the defendant Legarda. It is really unimportant, in this case, to which paragraph we apply the exception, but we think it was plainly intended to affect both, and such appears to be the construction of the Spanish Supreme Tribunal.[12]

(7). "The Court erred in finding that the defendant Valdez signed Exhibit E understandingly."

We had hoped that counsel would not ask us to go into the details of the circumstances affecting the credibility of those parties who testified. We heard and observed them both, and our finding (p. 7) thereon was made advisedly. The "circumstances and considerations" of this feature of the case were reviewed not only in defendant's trial brief but in plaintiff's also, and the incident mentioned on pp. 6 and 7 of the latter's reply, occuring during the examination reported on pp. 6 to 8 of the evidence did not escape us; tho in justice to defendant's present counsel it should be noted

85 that this occurred before he came into the case. One who could write, as it is undenied (p. 26, 60) said defendant did, the carefully phrased English note appearing on Exhibit D, can hardly be heard to claim unfamiliarity with that language. Nor do we find a subsequent denial of plaintiff's testimony (p. 57) that his negotiations with said defendant were "mostly in English." On the contrary, when the latter was afterward recalled he testified (pp. 74, 75) that the plaintiff

"told me 'You give me an option.' Then I told him to make it. 'How is it going to be, in English or Spanish?' he asked me. I told him that it was immaterial to me," etc.

This exactly corroborates plaintiff's testimony (p. 27).

Without quoting more, we think this quite sufficient to remove any doubt as to said defendant's ability to understand the language of the option.

Plaintiff states positively (pp. 27, 58) that defendant read the option. But, of course, as we said in the decision (p. 7) if he had seen fit to sign it without reading, that would afford him no defense. It must be remembered also that the terms of this option were no different (respecting the points now in dispute) from those which defendant himself embodied into the option (Exh. A) which he had prepared somewhat less than a year earlier, after correspondence

[12]Sentence of May 1, 1900.

with his co-defendant (p. 24). That did not require the matter to be submitted to the principal nor that payment be made
86 immediately upon acceptance. On the contrary, as we have seen, defendants thereby voluntarily gave plaintiff the same period of three months "hacer efectiva dicha compra." We cannot think there could have been a mistake in signing an instrument substantially like that which he himself had prepared.

(8). "The Court erred in holding that Exhibit A is a valid tender of performance or the equivalent thereof in accordance with article 347, C. C. P. * * * Plaintiff has never yet said that he would accept and pay for a good and sufficient deed to the property if the same were tendered to him." (Objection 12.)

Well, he said "I am ready to purchase the hacienda * * * for the sum of ₱307,000.00 * * *. Full payment will be made on or before the third day of March, 1912," etc. (Exh. G.) To us this reads like "an offer in writing to pay a particular sum of money" which Code C. P., sec. 347 declares "equivalent to the actual production and tender of the money." Of course under the common law (which, however, has never prevailed here) not only money but legal tender, i. e., gold, had to be laid down before the vender, and the very purpose of Code C. P., sec. 347 was to dispense with that burdensome requirement and substitute a mere "offer in writing to pay." True, the offer must meet the requirement of the contract itself. If that requires payment immediately upon acceptance the offer must so provide. But when the option of which the vendee avails himself allows "three months," and the vendor shows that he intended this period "hacer efectiva dicha compra," an
87 offer to pay one day before the expiration of said period clearly complies with section 347. Certainly nothing in that section precludes the vendee from accepting the option, and tendering payment in the same instrument.

The requirement as to title papers has already been discussed under subdivision 4 above.

(9). "The Court erred in holding that plaintiff is entitled to recover ₱73,000 as the amount which he would have made under timely performance." (Objection 13.)

We have not held "that plaintiff is entitled to recover ₱73,000. We have merely declared that, under exceptional circumstances, not yet appearing, and not likely ever to appear in this case, he would be. Following is the passage referred to:

"We do not think he (plaintiff) has established a right to recover as damages more than the property itself, and its net income, if any, since the date of tender (Jan. 19, 1912); unless for some reason a conveyance has now been rendered impossible, in which event plaintiff would at least be entitled to recover the profit of ₱73,000 which the undisputed evidence (p. 51, Exh. P) shows he would have made under timely performance."

Now, the only act that would render a conveyance to plaintiff impossible would be a prior alienation by defendant to some one else (for we have provided against their simple refusal by directing the

Clerk of this Court to convey in that event) and such alienation would violate the decree of this Court, which we must assume defendants intend to obey.

88 A restraining order to prevent such alienation was asked in the complaint, and the application was renewed by motion on March 20, 1912 (record, p. 34) but was rendered unnecessary by a sort of "gentlemen's agreement" among counsel. It would appear also that plaintiff has filed a lis pendens notice (record, p. 49) and anyway, in view of the wide publicity that has been given this case, it would seem next to impossible to find one who would meet the requirements of an innocent purchaser for value without notice and any other would be subject to the decree herein. Thus the language last quoted from the decision relates to an event which not only has not yet occurred, but which almost certainly will not occur, and cannot unless defendants themselves bring it about. Said language, consequently, is little more than obiter dicta, and we were perhaps indulging for such a remote contingency in the formal decree. But in any event defendants are not entitled to a new trial on this ground; the utmost they could obtain—and this only after it is made to appear that conveyance to plaintiff has become impossible—would be a modification of the decree in this particular, provided counsel's contention is correct that the prospective profit could not be proved without disclosing the ultimate purchaser.

But the record fails to support this contention. On the very day of plaintiff's acceptance (Exh. P) a reputable and well known law firm of this city sent him the following letter:

89 "Referring to our letter of January 17, 1912, we beg to state that six days' time will be sufficient for use to examine the title, leases, and other matters in connection with the Hacienda Nagtajan, provided the said papers are immediately placed at our disposal and full opportunity is given for examination. We hereby offer you the sum of ₱380,000.00 cash for the said Hacienda Nagtajan, containing approximately 1,993,000 square meters conditioned only upon the result of our examination of the title, leases and area of the land, showing the same to be in proper and satisfactory form and in accordance with your verbal representations."

Now it will hardly be contended that this firm could not have been compelled to perform its undertaking. The offer was the firm's not someone else's. This is further shown by the testimony (p. 51) of the member who signed for the firm, that if plaintiff

"Had produced the documents of title and demonstrated his ability to convey, in other words, if he had produced a deed signed by Don Benito Legarda, or by himself as attorney in fact for Benito Legarda, we would have paid the money, taken the documents, and taken possession of the property." (Cf. plaintiff's testimony (pp. 33-34) showing that he dealt with the firm only.)

The same member had previously explained, indeed, that his firm was not to "finance the operation," i. e., supply the price from firm funds,—and that a client "was prepared to purchase the property" but the fact remains that the firm had made the offer, was bound by it and stood ready to proceed. The question was not, therefore, one

"as to the readiness, ability and capacity of his undisclosed client," but as to that of the firm. Judge Ross testifies that "we would have paid the money" and no evidence was offered tending
90 to discredit this positive statement of fact, or to indicate that the firm was unable to provide itself with funds. The fact therefore that the client who was to purchase from the firm was undisclosed became wholly immaterial. He might have failed, but the plaintiff could still have held the firm, and its ability, declared by one of its members, to raise the money, has not, we repeat, been questioned.

A reputable firm of lawyers, then, undertook to pay plaintiff "₱380,000.00 cash" for the hacienda, six days from January 19, 1912. He had just undertaken to pay defendants for the same ₱307,000 "on or before the 3rd day of March, 1912." Thus a profit of ₱73,000 was almost in sight. But both undertakings were conditioned, as the law implies, upon plaintiff's obtaining not only a good, but an unincumbered, title, and it was compliance with this condition that defendants prevented (Ev., p. 33). If, now, they should be able to keep plaintiff from getting the land at all, his sole recourse would be under Civil Code Art. 1106, which awards as indemnity not only reimbursement for damages actually incurred, "but also the profit which the creditor may have failed to realize," which in this case is ₱73,000. We do not consider tenable the claim that this could not have been foreseen, for it is certainly no hardship to require a vendor to for-see the market price. Plaintiff's opinion that the price given him was "pretty high" not only related to an earlier period, but weighs little as against an actual offer
91 from a shrewd firm of attorneys, in touch with large business interests and with ample opportunity to keep posted on land values. Defendants had the opportunity to produce other evidence of offers or sales of similar property but not having done so, the offer of Bruce, Lawrence, Ross & Block affords competent, if not conclusive, evidence of market value.

We have now reviewed all of defendants' objections to the decision, but we find nothing in them which would justify even its modification. Their motions for new trial are accordingly overruled.

By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., April 23, 1913.

On April 26, 1913, the defendant Benito Legarda filed the following exception:

(Heading and Title.)

Having — informed on this date of the resolution of the Court of April 23, 1913, wherein *it* was denied the motion for rehearing filed by the defendant Benito Legarda in this case, the under-
92 signed, in behalf of said defendant, excepted to such resolution and request that it cause to be appeared the intention to

prosecute a bill of exceptions and appeal to the Supreme Court of these Islands.

Manila, April 25, 1913.

HAUSSERMANN, COHN & FISHER,
(Sgd.) By CHARLES C. COHN,
Attorneys for Defendant Benito Legarda.

The defendant Benito Legarda stands on all evidence taken in this action, both oral and documentary, which are made part of this bill of exceptions.

Wherefore, the defendant Benito Legarda, through his attorneys, requests the Court that the preceding bill of exceptions be considered filed within the statutory time and that the same be approved, signed and certified to.

Manila, May 3, 1913.

HAUSSERMANN, COHN & FISHER,
(Sgd.) By CHARLES C. COHN,
Attorneys for Defendant Benito Legarda.

Copy received this 3d day of May, 1913.
(Sgd.) THOS. D. AITKEN,
Attorney for Plaintiff.
ESCALER & SALAS,
(Sgd.) By PERFECTO SALAS,
Attorneys for Defendant Benito Valdes.

Filed this 3d day of May, 1913, at 10:55 a. m. (Sgd.) F. Canillas, Clerk of Court.

93 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instasce of the City of Manila.

No. 9436.

W. BORCK
versus
BENITO LEGARDA and BENITO VALDEZ.

Judge's Certificate to the Bill of Exceptions.

I hereby certify that the foregoing Bill of Exceptions is correct and contains all the essential parts for a clear understanding of all the errors assigned. Execution of the judgment shall not be stayed unless the appellant executes a good and sufficient bond in the sum of — Pesos (₱—), with sureties of recognized solvency to the satisfaction of the Court, to secure the performance of the judgment appealed from in case it be affirmed in whole or in part.

Manila, June 3, 1913.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill
94 of Exceptions, composed of 129 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 4th day of June, 1913.

(Sgd.) J. McMICKING, *Clerk.*

Supreme Court of the Philippines.

Clerk's Office.

Filed June 4, 1913, 10:00 a. m.

Be it known that in this 20th day of June, 1913, and by registered mail, three (3) copies of this printed Bill of Exceptions have been sent to each one of the parties of this case.

V. ALBERT, *Clerk,*
(Sgd.) By P. R. ANGELL,
Deputy Clerk.

95 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the City of Manila.

No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA and BENITO VALDES, Defendants.

Bill of Exceptions of the Defendant Benito Valdes.

Be it known by these presents that in the Court of First Instance for the City of Manila, Branch II, the following proceedings were had on the dates hereinbelow mentioned.

I.

That on March 13, 1912, the party plaintiff filed the following complaint:

(Heading and Title.)

Now comes the plaintiff in the above-entitled case and to the Court alleges his cause of action as follows:

96 1. That plaintiff is a resident of the City of Manila, Philippine Islands;

2. That the defendant Benito Legarda is the absolute owner and in fee simple of the Nagtahan Hacienda (Estate) which shall be described hereinafter more exactly, and that he has his legal residence in the City of Manila, though temporarily he is in the United States;

3. That the defendant Benito Valdes is the attorney-in-fact of the defendant Benito Legarda and that at all times mentioned in this complaint he has been acting by virtue of a power of attorney granted before a notary and filed in the office of the Registrar of Deeds and exhibited in other public offices of the City of Manila as such power of attorney, copy of which is hereto attached and marked Exhibit "A";

4. That on or about the 4th of December, 1911, the defendant Benito Valdes gave the plaintiff a document signed by him by which the said defendant Valdes promised to give and gave the plaintiff an option for the purchase of the Nagtahan Estate, property of the defendant Legarda, hereinafter described, at its assessed valuation, with the only condition that the right of option be exercised within three months from its date, to wit: on or before the fourth of March in the year of our Lord, one thousand nine hundred twelve;

5. That subsequently, to wit, on January 19, A. D. one thousand nine hundred twelve and while the offer of option was still in force, the plaintiff accepted in writing said offer in accordance with therein contained, and requested permission of the defendant Valdes
97 to examine the title deeds of the property, and also offered to pay defendant Valdes immediately and in cash the stipulated amount agreed upon in the contract for the sale of the said Hacienda, just as soon as a reasonable examination of the title deeds and other documents of the property could be made;

6. That the Nagtahan Hacienda is a property well known in the City of Manila, being registered with such name in the Court of Land Registration in which office its registration is better known as Record Case No. 2724, Decree No. 2471. The description of same by metes and bounds are hereto attached and marked as Exhibits "B" and "C;"

7. That said Hacienda contains an area of one million nine hundred ninety three thousand six hundred thirty one and eighteen hundredths (1,993,631.18) square meters, approximately, the value of which is very great, to wit, a value of not less than one million pesos (₱1,000,000.00), Philippine currency; though its assessed valuation as fixed by the Government at the time of the aforementioned option was only about ₱306,954.00, Philippine currency, and at present, due to certain expropriations of the land for street purposes, its assessed valuation is only about ₱240,000.00, Philippine currency;

8. That a great part of said property is let by the defendants to tenants who pay ten per cent (10%) or more of the assessed valua-

tion of the land as yearly rents; so that the income from the rents of the said property is more than twenty-five thousand pesos (₱25,000.00), Philippine currency, every year;

98 9. That in spite of frequent requests, the defendants have wilfully refused and still refuse to deliver to the plaintiff the title deeds and other documents relating to the property nor any of them, and wilfully refuse to execute any document of transfer of the property to the plaintiff;

10. That for the omission and refusal of defendant Valdes to sell the said property, which refusal is due to instructions given by defendant Legarda, the plaintiff has been damaged in the amount seven hundred sixty thousand pesos (₱760,000.00), Philippine currency;

11. That for the delay, omission and refusal of the defendant in fulfilling his obligation, the plaintiff has been compelled to pay heavy expenses, to suffer great losses, and through this means has been damaged in the amount of eighty thousand pesos (₱80,000.00), Philippine currency;

12. That plaintiff is ready and has been ready at all times to comply with the obligation imposed upon him, that is, to pay the defendants in cash the whole purchase price agreed upon.

Wherefore, plaintiff prays that judgment be rendered against the defendants and each of them, as follows:

1. That the said defendant Legarda be ordered and required to sell in fee simple unto the plaintiff, through a good and sufficient instrument, the aforementioned Nagtahan Hacienda with the description above given, and also to pay plaintiff the sum of eighty thousand pesos (₱80,000.00) as damages suffered by him for the de-

99 lay, omission and refusal of the said defendant to comply with the terms of the agreement.

2. That the defendants and each of them be ordered and required to render accounts to the plaintiff of all the rents and profits that they may receive on account of the property from the 19th of January, A. D. one thousand nine hundred twelve, until the date of the execution of the judgment in this case, with interest at the legal rate.

3. That in case the specific performance of the contract should be impossible the defendants pay to plaintiff damages to the amount of seven hundred sixty thousand pesos (₱760,000.00), Philippine currency.

4. That plaintiff have and recover interest and costs in this case.

5. That during the pendency of this case the defendants and all those who act in their name or stead or any of them be enjoined from selling, letting, alienating or creating any incumbrance upon the said Nagtahan Hacienda or any part thereof in any way, to the damage of the plaintiff.

6. That plaintiff have any other just and equitable remedy the Court may determine.

(Sgd.) HARTFORD BEAUMONT,
Attorney for the Plaintiff.

(Sgd.) W. BORCK,
Plaintiff.

Sworn and subscribed before me this 9th day of March, 1912, by W. Borck, affiant having exhibited to me his cedula No.
100 28257, issued in Manila on March 16, 1911.

(Sgd.) HARTFORD BEAUMONT,
Notary Public.

My commission expires December 31, 1912.

Reg. 386, Page 77.

101 EXHIBIT "A."

Power of Attorney.

Know All Men by These Presents:

That I, Don Benito Legarda y Tuason, of legal age, property owner, widower and resident of this City of Manila, Philippine Islands, hereby give and bestow a general power of attorney, ample and sufficient as by law may be required and deemed necessary, upon Don Benito Legarda y de la Paz, Don Mauro Prieto y Gorricho, and Don Benito Valdes, all three of legal age, married, merchants the first two named and physician the last mentioned, all of them residents of this capital city, that in my name and representation and exercising my rights and actions, severally or jointly and indiscriminately any of them, may execute and perform the following acts:

Administer, manage and control all kinds property, personal or real, business, collections and trade of the herein appearant, empowering them to give in lease the real properties at the price, time and conditions they may deem best; to receive all rents, fruits and profits, caring for the preservation, repair and development of such real properties; to spend for such purpose the money necessary therefor; to expel through legal means all delinquent tenants and lessees of the properties, and to perform all other acts and business of a zealous and intelligent attorney-in-fact.

To demand payment, collect and receive all and any sums or amounts of money, credits, dividends and interests pertaining
102 to the appearant or that may be due to him by any person or persons, corporations, associations or Government dependency by reason of whatsoever title, cause of action or right, and for this purpose to execute all necessary and adequate judicial or extrajudicial means to accomplish this object; and for all such collections, demands for payment or money received they may sign and issue the corresponding receipts, letters of payment or such other documents as may be required by the transaction, cancelling the mortgages or attachments to which the properties of the debtors and their sureties may be subjected to.

To pay, deliver or satisfy the things, properties and amounts that the herein appearant may be under an obligation to give or pay and also to pay all taxes and imposts to which any kind of property may — subject to; exacting for all money by them paid the necessary receipts or letters of payment.

To buy, sell, exchange, transfer, or to receive in payment or by

way of compensation, or otherwise to have and to sell all sort of property, personal, semi-personal, real, species, fruits, merchandise, effects, rights and choses in action for the amounts and conditions they may deem convenient; to receive and pay any amount in advance and cash all installment; to give and receive the things that may be the object of a transaction or exchange giving therefor the corresponding instruments of *ad*quisition or of transfer, and obtaining copies or certified copies of such instruments and to cause the registration of all real property in the proper Registry of
103 Deeds.

To loan or to borrow any amount of money or other fungible things at the rate of interest, time and conditions they may wish and deem convenient; to collect and pay the amount of capital or their interests when they should fall due, issuing and signing the corresponding public or private documents with or without warranty, either mortgage, personal or pignoratitious.

To ask for accounting from persons bound to make them to me for any reason; to examine and liquidate same, approve or disapprove them on their merits, and to receive the money that may be due me according to the accounting or to give documents of payment, relinquishment or final settlement.

To ask the preliminary registration of real property and other real rights that I may have a right to, causing such preliminary registrations to become final; to initiate proceedings to clear the cl-uds over the titles of land which may not have registered titles, and having obtained the declaration of good title to cause it to be registered in the proper Registry of Deeds.

To ask the fixing of the boundary lines of property and erecting boundary monuments, either to the administrative officials or through judicial channels instituting therefor the necessary legal proceedings.

To give the right to graze cattle in the mountains and properties of the appearant for the price and at the conditions they may deem convenient.

To take material or simbolic possession of all sort of property that I may acquire through any kind of title, instituting therefor
104 the necessary administrative or judicial proceedings.

To remit all or part of the debts of deserving debtors or give them extension of time within which to make payment.

To accept all kinds of property whether real or personal in payment of debts at their agreed assessed value and with the conditions they may think best.

To accept by the ordinary means or with benefit of inventory the testate or intestate inheritances that I may be entitled; to institute adequate proceedings for the declaration of heirs until finally decided; to take part in all and every proceeding toward the making of the inventory, valuation, liquidation, division, and adjudication of testamentary estate; to give their approval to such proceedings or to oppose them if necessary; to appoint experts and accountants to make the liquidation and division; to give their approval to those appointed by the other parties; to take and take charge of all kinds of property that may be allot-ed to me, executing in due form the

required documents, private or public, with the formalities and conditions in law necessary for their validity and conclusiveness, including in such documents such limitations as easements and other incumbrances, and by executing all acts, business and proceedings that may be necessary for the object aforementioned.

To take part in assignments of property, insolvency, bankruptcy, and suspension of payments of my debtors, and taking part in the meetings for the appointment of assignees, administrators or
105 receivers, to audit the credits and challenging those which they deem are not legitimate credits, and approve or oppose the proposed agreement submitted by the petitioner in bankruptcy and accounts of the receiver; to oppose the percentage of credits to be paid if they deem it unjust, to enter into any transaction which they may consider of advantage and to execute all transactions that may be necessary until the termination of such business and its incidents.

To charter vessels, load and sail them and to arrange everything necessary for the purpose.

To execute and sign bills, policies, bills of lading and such other documents that may be necessary to carry out the provisions of this power of attorney.

To receive and take from the Custom Houses all sorts of merchandise and goods consigned to me; sign all declarations for such effects at the Custom House; and whenever necessary to claim for non-delivery of said goods, and to file with the proper authorities complaints in accordance with Customs legislation.

To enter into any kind of contract, both civil and mercantile, reducing same into either private or public document, which shall contain a proviso as to its finality, and the nature of each contract taken into consideration.

To draw, indorse, accept, take part and dispose of any bill, draft, warrant, check and all kind of negotiable instrument; to pay
106 or collect them at its maturity, to protest them for lack of acceptance or payment, in the latter case to avail themselves of the rights granted by the Code of Commerce by filing suit against the proper party or parties for the recovery of its face value, interests, costs and damages.

To place in the Banks, corporations or private concerns all the funds in current account, custody, deposit or otherwise; to take the necessary steps for its withdrawal, receipt, and collection; to sign checks, notes, bills, bills of lading, declarations, and all necessary documents.

To compromise all and every kind of credits, actions, and rights; to stipulate the basis and conditions under which the compromise shall be effected; and to submit, if a compromise cannot be brought about, the decision to judgment of arbiters, and to that purpose to execute the necessary public document.

To reduce into public or private documents all acts done, contracts entered into, and liabilities or duties imposed upon them, said document shall contain provisions enforceable at law as to its validity and finality, the special nature of each case taken into consideration.

To take part in all kind of cases and proceedings which are before

any Court of Justice of the Peace, Court of First Instance, Supreme Court, and other ordinary court or any court of special juris-
107 diction; to appear before any of them and to bring any action, criminal or civil, which is necessary and proper; to sue and follow arbitration and voluntary jurisdiction proceedings, ordinary, administrative, possessory and those decidedly summary criminal and civil actions, interventions in probate bankruptcy and insolvency proceedings and all others known in law; to file complaints, answers, informations, and all other necessary pleadings; to take exceptions; to give and present evidence of judicial confessions, documentary, expert, oral and other evidence admissible by law; to impeach and contradict whatever may be made, done, or carried on to the contrary; to receive all sorts of notices, citations, and summons; to challenge the power to hear and determine cases of judicial officers; to impeach witnesses; to prosecute reinstatements, appeals, annulments, equities, elucidation, certiorari, writs of error, reviews, and sue civil as well as criminal liabilities in connection with decrees, orders, and sentences; to withdraw from proceedings already begun; to ask for processes, attachments, confirmations of preliminary attachments, release of attachments, appraisements, sales of goods, and executions of sentences; and to do all other acts, proceedings, investigations, and transactions which the laws on procedure prescribe for the prosecution of judicial matters in accordance with law, up to the final determination of the actions in which they should take part.

108 And finally, to substitute this power totally or partially in favor of a certain person or persons which they may choose; to revoke substitutions and appoint new ones in their stead.

So that for all these and whatever may incidentally come, they are given a most ample and comprehensive power, and I agree to consider as subsisting and valid, and not to claim by any means, whatsoever they should do, in accordance with the most solemn obligation which may be had in law.

I likewise state that by virtue of the present document now executed, I revoke the general power of attorney executed by me on September 4th, nineteen hundred, before the notary Mr. José María Rosado y Calvo.

In testimony whereof, I have hereunto signed this document in triplicate, in the Philippine Islands, this twentieth day of December, one thousand nine hundred and seven.

(Sgd.) B. LEGARDA.

Signed in presence of:
(Sgd.) JOSÉ SANTOS.
(Sgd.) V. LAMIA.

UNITED STATES OF AMERICA,
Philippine Islands,
City of Manila:

Before me, at the City of Manila, Philippine Islands, on this 20th day of December, A. D. 1907, personally appeared Don Benito Le-

garda y Tuason, known to me to be the person whose name is subscribed to the foregoing instrument, deposing upon oath that he executed the same as an act of his own free will and deed.

(Sgd.) FLORENCIO GONZALEZ DIEZ,
Notary Public.

My commission expires December 31, 1908.

(Copy.)

109 EXHIBIT "B."

Copy of the Decree No. 2471.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Having heard the case No. 2724, this Court decrees that Benito Legarda, of Manila, Philippine Islands, applicant, widower, possesses the absolute ownership of the real estate hereby adjudicated to him, situated in the City of Manila, described as follows:

Eight parcels of land known as "Hacienda de Nagtahan," marked with letters "A," "E," "F," "G," "H," "J," "K" and "L," situated in the District of Sampaloc.

Parcel "A."—Situated between Calle Balic-Balic and the Antipolo Branch of the Manila-Dagupan railroad, sites of Calubcob and Balic-Balic, barrio of San Isidro. Bounded on the N. W. by lands of San Lazaro Hospital and the Santa Clara Estate; N. E. by property of the Santa Mesa Estate and by the Parcel "B" of the applicant; S. E. by Calle and cemetery of Balic-Balic; and S. W. by the Manila-Antipolo railroad line and the estuary of Calubcob or Jalang. Beginning at a point marked "18" on plan, being the boundary monument No. 30 of the City of Manila; and from this point "18" S. 27° W., twenty meters
110 and fifty-eight centimeters (20.58) to point "19"; thence S. 46° 45′ W., sixty-six meters and fifty-four centimeters (66.54) to point "20"; thence S. 54° 05′ W., one hundred eighteen meters and ten centimeters (118.10) to point "21"; thence S. 37° 46′ W., one hundred twelve meters and seventy-five centimeters (112.75) to point "22"; thence S. 47° 10′ W., seventy meters and ninety-one centimeters (70.91) to point "23"; thence S. 78° W., three meters and sixty-four centimeters (3.64) to point "24"; thence N. 54° W., one hundred twenty-one meters and fifty-two centimeters (121.52) to point "25"; thence N. 18° 12′ W., sixty-nine meters and fifty-eight centimeters (69.58) to point "26"; thence S. 71° 45′ W., eighty meters and twenty-nine centimeters (80.29) to point "27"; thence N. 16° 50′ W., fifty-six centimeters (0.56) to point "28"; thence S. 71° 20′ W., fifty-six meters and seventy-three centimeters (56.73) to point "29"; thence S. 18° 25′ E., fifty-three centimeters (0.53) to point "30"; thence S. 71° 38′ W., five meters

and ten centimeters (5.10) to point "31"; thence S. 18° 30′ E., one hundred thirty meters and forty-three centimeters (130.43) to point "32"; thence N. 60° 23′ E., four meters and ninety-seven centimeters (4.97) to point "33"; thence S. 11° 21′ E., fifty-three centimeters (0.53) to point "34"; thence N. 70° 20′ E., fifty-six meters and ninety-six centimeters (56.96) to point "35"; thence N. 11° 21′ W., fifty-three centimeters (0.53) to point "36";
111 thence N. 70° 35′ E., seventy-nine meters and sixty-five centimeters (79.65) to point "37"; thence N. 18° 12′ W., forty-seven meters and eleven centimeters (47.11) to point "38"; thence S. 55° 10′ E., one hundred twelve meters and sixty-five centimeters (112.65) to point "39"; thence S. 11° 30′ E., eight meters and fifty-one centimeters (8.51) to point "40"; thence S. 26° 35′ —, fifty-one meters and thirty-two centimeters (51.32) to point "41"; thence S. 29° 15′ W., forty-three meters and fifty-one centimeters (43.51) to point "42"; thence S. 11° 25′ W., one hundred fifty-one meters and sixty centimeters (151.60) to point "43"; thence S. 12° 40′ W., seventy-nine meters and seventy centimeters (79.70) to point "44"; thence S. 26° 20′ W., twenty-five meters and twenty-seven centimeters (25.27) to point "1"; thence S. 46° 15′ W., eleven meters and twenty-nine centimeters (11.29) to point "2"; thence S. 53° 24′ W., ninety-one meters and twenty-one centimeters (91.21) to point "3"; thence N. 45° W., one thousand two hundred and thirty-four meters and sixty centimeters (1,234.60) to point "4"; thence N. 37° 40′ E., seventeen meters and fifty-seven centimeters (17.57) to point "5"; thence N. 27° 35′ W., twenty-two meters and forty-three centimeters (22.43) to point "6"; thence N. 1° E., seventeen meters and fifty centimeters (17.50) to point "7"; thence N. 30° W., twenty meters (20) to point "8"; thence N. 4° E., twenty-
112 five meters (25) to point "9"; thence N. 78° 20′ E., fifty-eight meters and sixty-eight centimeters (58.68) to point "10"; thence N. 68° 50′ E., thirty-three meters (33) to point "11"; thence N. 61° 13′ E., ninety-eight meters and twenty-three centimeters (98.23) to point "12"; thence N. 57° 38′ E., fifty-one meters and seventy centimeters (51.70) to point "13"; thence S. 39° E., thirty-six meters and forty-three centimeters to point "14"; thence N. 68° 55′ E., three hundred meters and nineteen centimeters (300.19) to point "15"; thence S. 11° 45′ W., one hundred sixteen meters and seventy-one centimeters (116.71) to point "16"; thence S. 73° 35′ E., six hundred nineteen meters and five centimeters (619.05) to point "17"; thence S. 53° 50′ E., three hundred five meters (305) to point of beginning; containing seven hundred thirty-two thousand two hundred fifty-two square meters and fifty-nine square centimeters (732,252.59 sq. m.). Lines from point "1" to "3", from "18" to "24" and from "39" to "1" follow the N. W. side of Calle Balic-Balic, from "3" to "4" the N. E. side of the Manila-Antipolo railroad line, from "4" to "9" the bank of the estuary Calubcob or Jalang, and from "17" to "18" the divisionary line between the City of Manila and the Province of Rizal.

Parcel "E."—Situated at the corner of Balic-Balic Street and a right of passage, in the barrio of San Roque. Bounded on the N. W.

by Calle Balic-Balic, N. E. by the Parcel "D" of the applicant, S. E. by lands of the Santa Mesa Estate, and S. W. by said
113 lands and a right of passage. Beginning at a point marked "11" on plan, which point is the intersection of the S. E. line of Balic-Balic Street and the divisionary line between the City of Manila and the Province of Rizal; and from this point "11" S. 53° 50′ E., six hundred twenty-eight meters (628) to point "12"; thence S. 13° 20′ W., ten meters and ninety centimeters (10.90) to point "13"; thence S. 46° W., five meters and twenty-five centimeters (5.25) to point "14"; thence S. 57° 30′ W., two hundred thirty-seven meters and eighty-five centimeters (237.85) to point "15"; thence S. 60° 48′ W., fifty-two meters and thirty centimeters (52.30) to point "16"; thence S. 77° 50′ W., eighty-seven meters and thirty-six centimeters (87.36) to point "17"; thence S. 53° 30′ W., one hundred twenty-nine meters and seventeen centimeters (129.17) to point "18"; thence S. 7° 20′ E., six meters and twenty centimeters (6.20) to point "19"; thence S. 46° 10′ W., seventy-six meters and fifty-three centimeters (76.53) to point "20"; thence S. 47° 50′ W., forty-four meters and ninety-five centimeters (44.95) to point "21"; thence S. 61° 02′ W., ten meters and fifteen centimeters (10.15) to point "22"; thence S. 56° 55′ W., seventeen meters and fifty-five centimeters (17.55) to point "23"; thence S. 73° 20′ W., sixty-three meters and thirty-four centimeters (63.34) to point "24"; thence S. 61° 15′ W., sixty meters and sixty-five centimeters
114 (60.65) to point "25"; thence S. 57° W., twenty-seven meters and four centimeters (27.04) to point "26"; thence S. 33° 05′ W., thirty-eight meters and ninety-nine centimeters (38.99) to point "27"; thence N. 41° 25′ W., one hundred seven meters and eighty-three centimeters (107.83) to point "28"; thence S. 48° 45′ W., forty-one meters and eleven centimeters (41.11) to point "29"; thence N. 20° 50′ W., fifty-two meters and sixty-five centimeters (52.65) to point "30"; thence N. 17° 30′ W., twenty-two meters and thirty-nine centimeters (22.39) to point "31"; thence N. 30° 05′ W., sixty-four meters and thirty-six centimeters (64.36) to point "32"; thence N. 22° 45′ W., twenty-five meters and twenty-eight centimeters (25.28) to point "33"; thence N. 5° 05′ W., sixteen meters and ninety-seven centimeters (16.97) to point "1"; thence N. 12° 40′ E., one hundred two meters and nine centimeters (102.09) to point "2"; thence N. 11° E., one hundred fifty-one meters and seventy-three centimeters (151.73) to point "3"; thence N. 29° 58′ E., forty-eight meters and fifty centimeters (48.50) to point "4"; thence N. 27° E., forty-eight meters and thirty-four centimeters (48.34) to point "5"; thence N. 28° 50′ E., twenty-one meters and eight centimeters (21.08) to point "6"; thence N. 46° 35′ E., sixty-four meters and ninety-eight centimeters (64.98) to point "7"; thence N. 37° E., one hundred twelve meters and forty-seven
115 centimeters (112.47) to point "8"; thence N. 55° 30′ E., one hundred eighteen meters and forty-four centimeters (118.44) to point "9"; thence N. 47° 45′ E., sixty-five meters and ninety-nine centimeters (65.99) to point "10"; thence N. 29° 15′ E., twenty-three meters and eighty centimeters (23.80) to the point of

beginning; containing three hundred eighty-eight thousand eight hundred twenty-seven square meters and twenty-five square centimeters (388,827.25 sq. m.). Lines from point "1" to "11" follow the S. E. side of Calle Balic-Balic, from "11" to "12" the divisionary line between the City of Manila and the Province of Rizal, and from "29" to "1" the N. E. side of a right of passage.

Parcel "F."—Situated at Balic-Balic Street between the Manila-Antipolo railroad line and a stream known as San Roque, Calubcob or Jalang. Bounded on the N. E. by the Manila-Antipolo railroad line; S. E. by Calle Balic-Balic; and W. and S. W. by a stream known as San Roque and Calubcob or Jalang. Beginning at a point marked "1" on plan, which point is the intersection of the N. W. line of Balic-Balic Street and the N. E. line of the stream San Roque; and from this point "1" N. 34° W., twenty-eight meters and ninety-eight centimeters (28.98) to point "2"; thence N. 25° 35′ W., seventeen meters and sixty-two centimeters (17.62) to point "3"; thence N. 5° 30′ E., eleven meters and thirty-three centimeters (11.33) to point "4"; thence N. 21° 15′ W., nine meters and
116 fifty centimeters (9.50) to point "5"; thence N. 9 W., nine meters (9) to point "6"; thence N. 78° 32′ W., nine meters (9) to point "7"; thence S. 78° 40′ W., twenty-six meters and twenty centimeters (26.20) to point "8"; thence N. 54° 06′ W., twenty-seven meters and fifty centimeters (27.50) to point "9"; thence N. 27° 10′ W., twenty-three meters and twenty centimeters (23.20) to point "10"; thence N. 32° 22′ W., fifteen meters and thirty centimeters (15.30) to point "11"; thence N. 48° 30′ W., twenty-eight meters and seventy-five centimeters (28.75) to point "12"; thence N. 7° 25′ E., thirty-three meters and sixty-five centimeters (33.65) to point "13"; thence N. 0° 45′ E., twenty-six meters and twenty-five centimeters (26.25) to point "14"; thence N. 21° 33′ W., fifty-seven meters and eighty centimeters (57.80) to point "15"; thence N. 11° W., eighty-five meters (85) to point "16"; thence N. 80° W., six meters and eighty centimeters (6.80) to point "17"; thence N. 83° 30′ W., thirty-two meters (32) to point "18"; thence N. 35° 45′ W., eighteen meters and thirty centimeters (18.30) to point "18"; thence N. 55° 30′ W., six meters and eighty centimeters (6.80) to point "20"; thence N. 35° 20′ W., twenty-three meters and eighty centimeters (23.80) to point "21"; thence N. 13° E., thirty-two meters (32) to point "22"; thence N. 28° 30′ W., twenty-two meters and fifty centimeters (22.50) to point "23"; thence N. 38° 45′ W., twenty-two meters and thirty centi-
117 meters (22.30) to point "24"; thence N. 3° 15′ W., thirty-three meters and ten centimeters (33.10) to point "25"; thence N. 10° E., thirty-three meters and twenty-five centimeters (33.25) to point "26"; thence N. 31° 28′ W., twenty-four meters and ninety centimeters (24.90) to point "27"; thence N. 38° W., nineteen meters (19) to point "28"; thence N. 4° 50′ E., thirteen meters and forty centimeters (13.40) to point "29"; thence N. 5° 35′ E., thirty meters (30) to point "30"; thence N. 82° 10′ W., thirty-one meters and fifty centimeters (31.50) to point "31"; thence N. 37° 35′ W., twelve meters and fifty centimeters (12.50) to point "32"; thence

N. 74° 57′ W., forty meters (40) to point "33"; thence N. 2° 58′ W., twelve meters (12) to point "34"; thence N. 1° 59′ W., fourteen meters (14) to point "35" thence N. 39° 20′ E., eleven meters and ninety centimeters (11.90) to point "36"; thence N. 9° 30′ E., thirty-three meters and fifty centimeters (33.50) to point "37"; thence N. 42° 48′ E., eighteen meters and ninety centimeters (18.90) to point "38"; thence N. 43° 30′ E., twenty-three meters and fifteen centimeters (23.15) to point "39"; thence N. 47° 15′ E., six meters and fifty-five centimeters (6.55) to point "40"; thence N. 0° 45′ E., twelve meters (12) to point "41"; thence N. 45° 20′ W., fifty-two meters (52) to point "42"; thence N. 22° 24′ W., thirty-three meters (33) to point "43"; thence N., four
118 meters and eighty centimeters (4.80) to point "44"; thence N. 37° 30′ W., twenty meters (20) to point "45"; thence N. 53° 35′ W., twenty meters and ten centimeters (20.10) to point "46"; thence N. 14° 45′ W., forty-three meters and twenty-five centimeters (43.25) to point "47"; thence N. 27° 20′ E., nine meters (9) to point "48"; thence N. 25° 25′ W., twenty-eight meters and thirty-three centimeters (28.33) to point "49"; thence N. 14° 35′ W., twenty-four meters and forty-eight centimeters (24.48) to point "50"; thence N. 50° 25′ W., eighteen meters and ten centimeters (18.10) to point "51"; thence N. 75° W., fifteen meters (15) to point "52"; thence N. 31° 02′ W., thirteen meters (13) to point "53"; thence N. 14° 13′ W., twenty-three meters and thirty centimeters (23.30) to point "54"; thence N. 20° 30′ W., seventeen meters and forty-five centimeters (17.45) to point "55"; thence N. 54° 28′ E., twenty-nine meters (29) to point "56"; thence N. 6° 20′ W., thirty-two meters and forty-eight centimeters (32.48) to point "57"; thence N. 43° 50′ E., twenty-eight meters and fifty centimeters (28.50) to point "58"; thence N. 8° W., twenty-seven meters and forty-seven centimeters (27.47) to point "59"; thence N. 32° W., twelve meters and fifty centimeters (12.50) to point "60"; thence N. 13° W., forty-three meters and thirty centimeters (43.30) to point "61"; thence N. 19° 25′ E., seventeen meters and twenty centimeters (17.20) to point "62"; thence S. 45° E., one
119 thousand two hundred thirty-one meters and twenty-five centimeters (1,231.25) to point "63"; thence S. 58° 15′ W., eighty-three meters and sixty centimeters (83.60) to point "64"; thence S. 54° 58′ W., one hundred twenty-four meters and twenty-eight centimeters (124.28) to point "65"; thence S. 57° 35′ W., eighty-nine meters and seventy-one centimeters (89.71) to point "66"; thence S. 43° 55′ W., thirty-two meters and twenty centimeters (32.20) to point "67"; thence S. 55° 55′ W., seventeen meters and seventy-nine centimeters (17.79) to point "68"; thence S. 58° 10′ W., sixty-one meters and four centimeters (61.04) to point "69"; thence S. 64° 15′ W., seventy-nine meters and sixty-seven centimeters (79.67) to point "70"; thence S. 62° W., forty-two meters and seventy-two centimeters (42.72) to the point of beginning; containing four hundred nine thousand four hundred forty-three square meters and fifty square centimeters (409,443.50 sq. m.). Lines from point "1" to "62" follow the sinuosities of the E. bank

of a stream known as San Roque and Calubcob or Jalang, from "62" to "63" the S. W. side of the Manila-Antipolo railroad line, and from "63" to "1" the N. W. side of Balic-Balic Street.

Parcel "G."—Situated between Balic-Balic Street and San Roque estuary. Bounded on the N. E. by lands of Santa Clara Estate and the estuary of San Roque; S. E. by Calle Balic-Balic; and N. W., W. and S. W. by lands of Santa Clara Estate. Beginning at
120 a point marked "1" on plan and on the ground by a stone monument, being the intersection of the N. W. line of Balic-Balic Street and the S. W. bank of San Roque estuary; and from this point "1" S. 64° 40′ W., eighty-one meters and fifty centimeters (81.50) to point "2"; thence S. 73° 55′ W., seventeen meters and fifty-two centimeters (17.52) to point "3"; thence S. 64° 15′ W., seventy-four meters and eighty-two centimeters (74.82) to point "4"; thence S. 62° 30′ W., thirty-one meters and thirty-four centimeters (31.34) to point "5"; thence S. 69° 14′ W., forty-nine meters and sixty-six centimeters (49.66) to point "6"; thence N. 28° 25′ W., thirty-three meters and eighty-nine centimeters (33.89) to point "7"; thence N. 32° 10′ W., thirty-two meters and fifty-six centimeters (32.56) to point "8"; thence N. 29° 45′ W., thirty-three meters and fifty-five centimeters (33.55) to point "9"; thence N. 2° E., twenty-four meters and thirty-seven centimeters (24.37) to point "10"; thence N. 16° 52′ E., thirty meters and nineteen centimeters (30.19) to point "11"; thence N. 12° 16′ W., thirty-three meters and ninety-six centimeters (33.96) to point "12"; thence N. 8° 42′ W., thirty-six meters and forty-two centimeters (36.42) to point "13"; thence N. 18° 35′ W., thirty meters and forty centimeters (30.40) to point "14"; thence N. 14° 15′ W., forty-eight meters and sixty-eight centimeters (48.68) to point "15"; thence N. 17°
121 20′ W., fifty-one meters and thirteen centimeters (51.13) to point "16"; thence N. 20° W., seventy-six meters and sixteen centimeters (76.16) to point "17"; thence N. 42° 35′ W., nineteen meters and eight centimeters (19.08) to point "18"; thence N. 69° W., fifteen meters and eighteen centimeters (15.18) to point "19"; thence S. 82° W., twenty-three meters and eighty-six centimeters (23.86) to point "20"; thence N. 18° 45′ W., sixty-seven meters and eighty-nine centimeters (67.89) to point "21"; thence N. 21° W., eighty-five meters and twelve centimeters (85.12) to point "22"; thence N. 37° W., thirty-five (35) meters to point "23"; thence N. 31° W., fifty-four meters and sixty-seven centimeters (54.67) to point "24"; thence N. 23° W., fifty-eight meters and seventy-seven centimeters (58.77) to point "25"; thence N. 66° 50′ E., fifteen meters and fifty-five centimeters (15.55) to point "26"; thence N. 2° 12′ W., thirty-nine meters and thirty-five centimeters (39.35) to point "27"; thence N. 8° 25′ W., thirty meters and sixty centimeters (30.60) to point "28"; thence N. 79° 25′ E., thirteen meters and sixty-one centimeters (13.61) to point "29"; thence S. 8° 30′ E., ninety-three meters and twenty-six centimeters (93.26) to point "30"; thence S. 22° 23′ E., forty-seven meters and three centimeters (47.03) to point "31"; thence S. 21° 40′ E., fifty-three meters and sixty-six centimeters (53.66) to point "32"; thence S. 21° 35′

122 E., sixty-six meters and fifty-two centimeters (66.52) to point "33"; thence N. 86° 30′ E., seventeen meters and forty centimeters (17.40) to point "34"; thence N. 69° 42′ E., twenty-two meters and nine centimeters (22.09) to point "35"; thence N. 14° W., thirty meters and sixteen centimeters (30.16) to point "36"; thence N. 25° 10′ W., twenty-two meters and thirty-eight centimeters (22.38) to point "37"; thence N. 24° 55′ W., sixty meters and forty centimeters (60.40) to point "38"; thence N. 26° 50′ W., forty-eight meters and fifty-five centimeters (48.55) to point "39"; thence N. 12° 36′ E., twelve meters (12) to point "40"; thence N. 19° 53′ W., twenty-six meters (26) to point "41"; thence N. 34° 48′ W., fifteen meters and twenty centimeters (15.20) to point "42"; thence N. 13° 32′ W., twenty-seven meters and ninety-five centimeters (27.95) to point "43"; thence N. 18° 28′ W., eighty-eight meters and thirty-five centimeters (88.35) to point "44"; thence N. 12° W., twenty-six meters and four centimeters (26.04) to point "45"; thence N. 36° 10′ W., sixteen meters and eighty-one centimeters (16.81) to point "46"; thence N. 16° 03′ W., thirty-two meters and forty centimeters (32.40) to point "47"; thence N. 29° 30′ W., forty-three meters and thirty-three centimeters (43.33) to point "48"; thence N. 62° 32′ E., fifty-two meters and twenty-two centimeters (52.22) to point "49"; thence S. 44° 26′ E., seven meters and thirty centimeters (7.30) to point "50"; thence S. 22°
123 30′ E., fifty-five meters and ninety centimeters (55.90) to point "51"; thence S. 23° 45′ E., sixty-three meters and twenty-four centimeters (63.24) to point "52"; thence S. 18° 40′ E., fifty-two meters and ninety-five centimeters (52.95) to point "53"; thence S. 30° 08′ E., twenty-five meters and eighty-six centimeters (25.86) to point "54"; thence S. 23° E., sixty-three meters and twenty-nine centimeters (63.29) to point "55"; thence S. 22° E., seventy-four meters and fifty-six centimeters (74.56) to point "56"; thence N. 60° 27′ E., twenty-four meters and twenty centimeters (24.20) to point "57"; thence N. 20° 30′ W., twenty-nine meters and thirty-four centimeters (29.34) to point "58"; thence N. 7° 12′ W., twenty meters and eighty-one centimeters (20.81) to point "59"; thence N. 24° 35′ E., ten meters and twenty-seven centimeters (10.27) to point "60"; thence N. 60° 25′ E., sixteen meters and seventy-nine centimeters (16.79) to point "61"; thence N. 83° E., eight meters and twenty-five centimeters (8.25) to point "62"; thence S. 63° 08′ E., fifteen meters and forty-seven centimeters (15.47) to point "63"; thence S. 5° 15′ E., twenty-four meters and ninety-one centimeters (24.91) to point "64"; thence S. 16° 04′ E., twenty meters and sixteen centimeters (20.16) to point "65"; thence S. 18° 10′ E., sixty-six meters and twenty-nine centimeters (66.29) to point "66"; thence S. 68° 45′ W., twenty-two meters and
124 sixty-eight centimeters (22.68) to point "67"; thence N. 50° 05′ W., twenty-four meters and seven centimeters (24.07) to point "68"; thence N. 31° 10′ W., nineteen meters and fifty-six centimeters (19.56) to point "69"; thence S. 62° 50′ W., eighteen meters and sixty-nine centimeters (18.69) to point "70"; thence S. 33° 55′ E., fifty-nine meters and twenty centimeters (59.20) to point "71";

thence S. 52° 28′ E., twenty meters and eighty-nine centimeters (20.89) to point "72"; thence S. 39° 52′ E. thirty-four meters and sixty centimeters (34.60) to point "73"; thence N. 46° 20′ E., fifteen meters and thirty-six centimeters (15.36) to point "74"; thence N. 27° 55′ E., fifteen meters and thirty-two centimeters (15.32) to point "75"; thence N. 75° 25′ E., thirty-five meters and eighty-eight centimeters (35.88) to point "76"; thence S. 26° 35′ E., twenty-six meters and eighty centimeters (26.80) to point "77"; thence S. 30° E., twenty-three meters and ninety-eight centimeters (23.98) to point "78"; thence S. 11° 25′ W., twenty-nine meters and seven centimeters (29.07) to point "79"; thence S. 24° 20′ E., twenty-eight meters and seventy-two centimeters (28.72) to point "80"; thence S. 43° 35′ E., thirty-three meters and nine centimeters (33.09) to point "81"; thence S. 79° 45′ E., thirty-two meters and fifteen centimeters (32.15) to point "82"; thence S. 11° E., seventy-seven meters (77) to point "83"; thence S. 22° 45′ E., fifty-eight meters and sixty centimeters (58.60) to point "84"; thence
125 S. 0° 35′ E., twenty-five meters (25) to point "85"; thence S. 10° 30′ W., thirty-six meters (36) to point "86"; thence S. 45° 45′ E., thirty-two meters and forty-five centimeters (32.45) to point "89"; thence S. 87° 45′ E., fifteen meters (15) to point "90"; thence N. 74° 20′ E., sixteen meters and eighty centimeters (16.80) to point "91"; thence S. 60° E., six meters and eighty centimeters (6.80) to point "92"; thence S. 6° 18′ E., twenty-eight meters and ten centimeters (28.10) to point "93"; thence S. 29° 15′ E., forty-three meters and ten centimeters (43.10) to the point of beginning; containing fifteen thousand two hundred thirty square meters and twenty-two square centimeters (15,230.22 sq. m.). Lines from point "1" to "6" follow the N. W. side of Calle Balic-Balic and from "76" to "1" the sinuosities of S. W. bank of San Roque estuary.

Parcel "H."—Situated between Calle Guipit and corner of Balic-Balic and Alix Streets, barrio of San Roque. Bounded on the N. by Calle Balic-Balic; E. by Calle Guipit; S. by Calle Alix and properties of Gonzalo Tuason, Isidra Lorente, Joaquina Barrera and Ramon Sanchez Torrejon; and W. by properties of Ramon Sanchez Torrejon, heirs of Domingo Espiritu, Agapito Changco, Jose Gabriel Francisco and Simeon, Jose and Placida Alma Jose, and by Calle Lardizabal. Beginning at a point marked "1" on plan, being the intersection of the S. W. line of Calle Guipit and the S. E. line of Calle Balic-Balic; and from this point "1" S. 17° 13′ E., two
126 hundred fifty-six meters and eighty-five centimeters (256.85) to point "2"; thence S. 75° 05′ W., twenty-eight meters (28) to point "3"; thence N. 13° 05′ W., two meters and forty-six centimeters (2.46) to point "4"; thence S. 77° 05′ W., eight meters and ninety-two centimeters (8.92) to point "5"; thence S. 12° 45′ E., twenty-five meters and seventeen centimeters (25.17) to point "6"; thence S. 75° 40′ W., three meters (3) to point "7"; thence N. 15° W., twenty-five meters and twenty-two centimeters (25.22) to point "8"; thence S. 77° 05′ W., sixteen meters and sixty-five centimeters (16.65) to point "9"; thence N. 14° W., five meters and eighty-four centimeters (5.84) to point "10"; thence S. 76° 12′ W.,

six meters and forty-two centimeters (6.42) to point "11"; thence N. 12° 25′ W., one meter and eighteen centimeters (1.18) to point "12"; thence S. 76° 50′ W., one meter and eighty-two centimeters (1.82) to point "13"; thence S. 15° 46′ E., thirty-two meters and ninety centimeters (32.90) to point "14"; thence S. 73° 25′ W., twenty meters and sixty-three centimeters (20.63) to point "15"; thence N. 12° 30′ W., twenty-two meters and thirty-five centimeters (22.35) to point "16"; thence S. 77° W., fifty-five centimeters (0.55) to point "17"; thence N. 12° W., eight meters and five centimeters (8.05) to point "18"; thence N. 73° E., four meters and twenty centimeters (4.20) to point "19"; thence N. 13° W., twenty-two meters and thirteen centimeters (22.13) to point "20"; thence
127 S. 75° W., nineteen meters and fifty centimeters (19.50) to point "21"; thence S. 9° 45′ E., fifty-two meters and eighteen centimeters (52.18) to point "22"; thence S. 73° 25′ W., three meters and seventy-six centimeters (3.76) to point "23"; thence S. 68° 20′ W., thirty-four meters and sixty centimeters (34.60) to point "24"; thence S. 64° 45′ W., seventeen meters and sixty centimeters (17.60) to point "25"; thence N. 19° W., fourteen meters and twenty-two centimeters (14.22) to point "26"; thence N. 17° W., nine meters and ninety centimeters (9.90) to point "27"; thence S. 68° 25′ W., fifteen meters and twenty-seven centimeters (15.27) to point "28"; thence N. 17° 30′ W., eight meters and seventy centimeters (8.70) to point "29"; thence S. 72° 30′ W., fifteen meters and fifty centimeters (15.50) to point "30"; thence S. 75° 30′ W., three meters and forty centimeters (3.40) to point "31"; thence S. 83′ W., nine meters and five centimeters (9.05) to point "32"; thence N. 1° 55′ W., twenty meters (20) to point "33"; thence N. 18° 33′ E., sixty-four centimeters (0.64) to point "34"; thence N. 12° 35′ W., fifteen meters and thirty-five centimeters (15.35) to point "35"; thence N. 6° 10′ W., nineteen meters and twenty-three centimeters (19.23) to point "36"; thence N. 83° 50′ E., twenty meters and fifty-three centimeters (20.53) to point "37"; thence N. 16° 30′ W., seven meters and thirty-seven centimeters (7.37) to point "38"; thence N. 13° W., ten meters and thirty-two centimeters (10.32) to
128 point "39"; thence N. 14° 18′ W., forty-three meters and thirty-nine centimeters (43.39) to point "40"; thence S. 88° 14′ W., two meters and thirty centimeters (2.30) to point "41"; thence N. 4° 55′ W., five meters and eighty-eight centimeters (5.88) to point "42"; thence N. 77° 53′ E., fifty meters and sixty-two centimeters (50.62) to point "43"; thence N. 16° 10′ W., forty-nine meters and thirty-nine centimeters (49.39) to point "44"; thence N. 14° W., thirty-eight meters and forty centimeters (38.40) to point "45"; thence N. 24° 10′ W., twenty-seven meters and ten centimeters (27.10) to point "46"; thence N. 64° 30′ E., thirty-seven meters and sixty-three centimeters (37.63) to point "47"; thence N. 66° 08′ E., forty-four meters and seventy-nine centimeters (44.79) to point "48"; thence N. 66° 24′ E., twenty-nine meters and twenty-eight centimeters (29.28) to point "49"; thence N. 67° 58′ E., eighteen meters and sixteen centimeters (18.16) to the point of beginning; containing forty-four thousand five hundred eleven

square meters and twelve square centimeters (44,511.12 sq. m.). Lines from point "1" to "2" follow the S. W. side of Calle Guipit, from "6" to "7," from "14" to "15" and from "22" to "25" the N. side of Calle Alix, and from "46" to "1" the S. E. side of Calle Balic-Balic.

Parcel "J."—Situated at Rotonda, corner Calles Santa Mesa and Nagtahan. Bounded on the North by Calle Santa Mesa and property of Manuela and Justo Peña; E. by the stream Valencia;
129 S. by property of the brothers O. Farrell; and W. by Calle Nagtahan and the Rotonda. Beginning at a point marked "1" on plane, being the intersection of the W. bank of the stream Valencia and the S. line of Calle Santa Mesa; from this point "1" S. 21° 30′ E., fifteen meters (15) to point "2"; thence S. * * * W., twelve meters (12) to point "3"; thence S. 47° 45′ W., sixteen meters and twenty-five centimeters (16.25) to point "4"; thence S. 25° 50′ W., twenty-five meters (25) to point "5"; thence S. 1° E., eight meters and fifty centimeters (8.50) to point "6"; thence S. 27° 50′ W., eleven meters and thirty centimeters (11.30) to point "7"; thence S. twenty-seven meters and fifty centimeters (27.50) to point "8"; thence S. 77° 30′ W., forty-five meters and eighty-nine centimeters (45.89) to point "9"; thence S. 77° 19′ W., sixty-four meters and twelve centimeters (64.12) to point "10"; thence S. 80° W., forty-three meters and sixty-eight centimeters (43.68) to point "11"; thence S. 78° 20′ W., sixty-seven meters and ten centimeters (67.10) to point "12"; thence N. 28° 30′ W., fifty-nine meters and eighty centimeters (59.80) to point "13"; thence N. 2° 20′ E., three meters and twenty centimeters (3.20) to point "14"; thence N. 14° 35′ E., four meters and four centimeters (4.04) to point "15"; thence, following the periphery of an arch of 27.80 meters of radius and 60 degrees, being the vertex the center of the public fountain situated at the Rotonda de Sampaloc, to point "16"; thence
130 N. 14° E., four meters and ten centimeters (4.10) to point "17"; thence N. 34° 35′ E., three meters and seventy-three centimeters (3.73) to point "18"; thence N. 63° E., fifteen meters and twenty-one centimeters (15.21) to point "19"; thence N. 66° 30′ E., eight meters and fifty-three centimeters (8.53) to point "20"; thence N. 70° E., twenty-four meters and fifty-five centimeters (24.55) to point "21"; thence N. 72° 40′ E., twenty meters and ninety-six centimeters (20.96) to point "22"; thence S. 15° 30′ E., forty-two meters and seventy-seven centimeters (42.77) to point "23"; thence S. 17° 15′ E., eleven meters and seven centimeters (11.07) to point "24"; thence N. 73° 30′ E., twenty-nine meters and thirteen centimeters (29.13) to point "25"; thence N. 77° E., six meters and thirty-two centimeters (6.32) to point "26"; thence N. 11° W., ten meters and thirty centimeters (10.30) to point "27"; thence N. 9° 45′ W., twenty-five meters and twelve centimeters (25.12) to point "28"; thence N. 18° 45′ W., fourteen meters and ninety-eight centimeters (14.98) to point "29"; thence N. 80° 35′ E., nineteen meters and seventy-eight centimeters (19.78) to point "30"; thence N. 80° 45′ E., twenty-four meters and forty-

one centimeters (24.41) to point "31"; thence N. 80° 35′ E., thirty-seven meters and nine centimeters (37.09) to point "32"; thence N. 80° 30′ E., sixty meters and seventy centimeters (60.70) to point "33"; thence N. 36 E., thirteen meters and eighty-
131 three centimeters (13.83) to the point of beginning; containing twenty-four thousand six hundred square meters and seventy square centimeters (24,600.70 sq. m.). Lines from point "1" to "8" follow the W. bank of the estuary Valencia, from "12" to "13" the N. E. side of Calle Nagtahan and from "17" to "22" and from "29" to "1" the S. side of Calle Santa Mesa.

Parcel "K."—Situated at Calle Santa Mesa. Bounded on the N. by a piece of land of the Carriedo water-tube; E. by the estuary Valencia; S. by Calle Santa Mesa; and W. by property of Justo Peña. Beginning at a point marked "1" on plan, being the intersection of the N. line of Calle Santa Mesa and the W. bank of the estuary Valencia; and from this point "1" S. 82° 25′ W., one hundred eight meters and two centimeters (108.02) to point "2"; thence N. 7° 30′ W., eight meters (8) to point "3"; thence N. 82° 40′ E., one hundred sixteen meters and forty-seven centimeters (116.47) to point "4"; thence S. 36° W., ten meters and two centimeters (10.02) to point "5"; thence S. 4° 30′ E., seventy centimeters (0.70) to the point of beginning; containing eight hundred seventy-nine square meters and forty-eight square centimeters (879.48 sq. m.). Lines from point "1" to "2" follow the N. side of Calle Santa Mesa and from "4" to "1" the W. bank of the estuary Valencia.

Parcel "L."—Situated at Alix Street between the Sampaloc estuary and a branch of same estuary. Bounded on the N. by
132 Calle Alix, E. and S. by the estuary of Sampaloc, W. by property of Serapia Oliva and Felix de la Rama, there being a branch os said estuary between the last two estates. Beginning at a point marked "1" on plan, being the intersection of the S. line of Calle Alix and the W. bank of the estuary of Sampaloc; from this point "1" S. 5° 08′ E., eighteen meters and fifty-five centimeters (18.55) to point "2"; thence S. 13° 40′ E., seventeen meters and sixty centimeters (17.60) to point "3"; thence S. 50° 05′ E., seventeen meters and sixty centimeters (17.60) to point "4"; thence S. 30° 20′ E., nine meters (9) to point "5"; thence S. 42° 45′ W., forty-one meters and fifty centimeters (41.50) to point "6"; thence N. 82° 35′ W., seven meters and twelve centimeters (7.12) to point "7"; thence N. 36° 50′ W., thirty-eight meters and thirty-five centimeters (38.35) to point "8"; thence N. 63° 40′ W., sixteen meters and sixty-five centimeters (16.65) to point "9"; thence S. 76° 30′ W., sixteen meters and seventy-four centimeters (16.74) to point "10"; thence S. 8° 15′ W., forty-four meters and seven centimeters (44.07) to point "11"; thence S. 26° 25′ W., seven meters (7) to point "12"; thence S. 78° 30′ W., seven meters and fourteen centimeters (7.14) to point "13"; thence N. 65° 30′ W., forty-six meters (46) to point "14"; thence S. 85° 30′ W., nineteen meters and ninety centimeters (19.90) to point "15"; thence S. 71° 40′
133 W., seventeen meters and twenty-five centimeters (17.25) to point "16"; thence S. 47° 15′ W., eleven meters and eighty-five centimeters (11.85) to point "17"; thence S. 28° W., seventeen

meters (17) to point "18"; thence S. 4° 45′ E., twenty-two meters and thirty centimeters (22.30) to point "19"; thence S. 9° E., fifteen meters and eighty centimeters (15.80) to point "20"; thence S. 55° 50′ W., six meters and fifty centimeters (6.50) to point "21"; thence N. 64° W., ten meters (10) to point "22"; thence N. 12° 35′ W., fifteen meters (15) to point "23"; thence N. 17° 03′ W., twelve meters and forty centimeters (12.40) to point "24"; thence N. 9° 58′ W., forty-seven meters (47) to point "25"; thence S. 83° W., eight meters and seventy centimeters (8.70) to point "26"; thence S. 86° 20′ W., thirteen meters and forty-six centimeters (13.46) to point "27"; thence N. 17° 48′ W., fifteen meters and fifty-one centimeters (15.51) to point "28"; thence N. 71° W., one meter (1) to point "29"; thence N. 28° 30′ W., nine meters and forty centimeters (9.40) to point "30"; thence N. 68° 50′ E., twenty-eight meters and fifty-seven centimeters (28.57) to point "31"; thence N. 19° 40′ W., seventy-seven centimeters (0.77) to point "32"; thence N. 66° 08′ E., thirty-four meters and ninety-seven centimeters (34.97) to point "33"; thence N. 71° 26′ E., seventeen meters and twenty-five centimeters (17.25) to point "34"; thence N. 75° 26′ E.,
134 seventy-three meters and fifty-five centimeters (73.55) to point "35"; thence N. 78° 26′ E., twenty-two meters and nine centimeters (22.09) to point "36"; thence N. 77° 45′ E., forty-eight meters and sixty-five centimeters (48.65) to point "37"; thence N. 74° 32′ E., nine meters and thirty-five centimeters (9.35) to the point of beginning; containing sixteen thousand three hundred ninety-one square meters and eighty-seven square centimeters (16,391.87 sq. m.). Lines from point "1" to "22" follow the W. bank and the N., respectively, of the estuary of Sampaloc, and from "30" to "1" the S. side of Calle Alix. All points referred to are marked on three plans; bearings magnetic; date of survey, April and May, 1906, except the Parcel "H" which was surveyed on December 4, 1906, and Parcel "L" on June 12, 1908.

Therefore, it is ordered and decreed that the estate in question be registered, in accordance with the Land Registration Act, in the name of said Benito Legarda, subject, however, to any lien, which may be subsisting and to the encumbrances referred to in Section 39 of said Act, * * * of the Manila Building & Loan Association for a period of fifteen (15) years which will be due on December 31, 1919, as per deeds under dates of January 24, 1905, and September 16 of the same year.

135 Given by the Hon. W. L. Goldsborough, Judge-at-Large of the said Court of Land Registration, in Manila the 9th day of August, 1907, at ten o'clock a. m.

To which I certify:

[Seal of the Court.]

(Sgd.) A. K. JONES,
Clerk of Court.

A true copy which I hereby certify:
Issued this 7th day of September, 1908.

(Copy.) ——— ———,
Clerk of Court.

136 EXHIBIT "C."

Copy of the Decree No. 2471.

UNITED STATES OF AMERICA,
Philippine Islands:

Court of Land Registration.

Having heard the case No. 2724, this Court decrees that Benito Legarda, of Manila, Philippine Islands, applicant, widower, possesses the absolute ownership of the real estate hereby adjudicated to him, situated in the City of Manila, described as follows:

Four parcels of land known as "Hacienda de Nagtahan," marked with letters "B," "C," "D" and "I," situated in the Municipality of Caloocan.

Parcel "B."—Situated in the Calle Balic-Balic, site of Balic-Balic, barrio of San Isidro. Bounded on the N. by lands of the Santa Mesa Estate; S. E. by Calle Balic-Balic; and S. W. by Parcel "A" of the applicant. Beginning at a point marked "A" on plan, being the boundary monument No. 30 of the City of Manila; and from this point "A" N. 53° 50′ W., following the divisionary line between the City of Manila and the Province of Rizal, three hundred five meters (300) to point "B"; thence S. 73° 35′ E., forty-two meters and eighty-five centimeters (42.85) to point "C"; thence N. 89° 30′ E., three hundred eleven meters and eighty-nine centi-
137 meters (311.89) to point "D"; thence S. 29° 45′ W., fourteen meters and nineteen centimeters (14.19) to point "E"; thence N. 68° 15′ W., four meters and eighty centimeters (4.80) to point "F"; thence N. 33° 30′ W., one hundred twenty meters and fifty-one centimeters (120.51) to point "G"; thence S. 27° *O.*, sixty-eight meters and eighty-seven centimeters (68.87) to point of beginning; containing twenty-eight thousand five hundred seventeen square meters and fifty square decimeters (28,517.50 sq. m.). Lines from point "D" to "A" follow the N. W. side of the Calle Balic-Balic.

Parcel "C."—Situated in the road of Diliman, corner to the Santa Mesa high-road, barrio of San Isidro. Bounded on the North by lands of the Santa Mesa Estate; S. E. and S. by Santa Mesa high-road; and W. by the road of Diliman. Beginning at a point marked "A" on plan, which point is the intersection of the N. line of the Santa Mesa high-road and the E. line of the road of Diliman; and from this point "A" N. 87° 56′ E., sixty meters and seventy-seven centimeters (60.77) to point "B"; thence S. 89° 27′ E., two hundred fifteen meters and eighty-nine centimeters (215.89) to point "C"; thence S. 87° 55′ W., thirty-three meters and fifteen centimeters (33.15) to point "D"; thence S. 78° 20′ W., sixty-one meters and nineteen centimeters (61.19) to point "E"; thence S. 88° 15′ W., seventy-eight meters and ninety-two centimeters (78.92)

to point "F"; thence S. 87° 56′ W., sixty meters and seventy-
138 seven centimeters (60.77) to point of beginning; containing two thousand eighty square meters (2,080 sq. m.). Line from point "A" to "B" follows the E. side of the Diliman road, and the lines from point "C" to "A" the N. side of the Santa Mesa high-road.

Parcel "D."—Situated in Calle Balic-Balic, corner Santa Mesa high-road, barrio of San Isidro. Bounded on the N. by Santa Mesa high-road; N. by lands of the Santa Mesa Estate and the Santa Mesa high-road; S. W. by lands of the Santa Mesa Estate; and S. W. by the Parcel "E" of the applicant; and N. W. by the Calle Balic-Balic. Beginning from a point marked "A" on plan, which point is the intersection of the S. W. line of Calle Balic-Balic and the divisionary line between the City of Manila and the Province of Rizal; and from this point "A" N. 29° 15′ E., seventeen meters and fifty centimeters (17.50) to point "B"; thence N. 23° 25′ E., fifty meters and forty-five centimeters (50.45) to point "C"; thence N. 34° 25′ E., one hundred fifteen meters and eight centimeters (115.08) to point "D"; thence N. 88° 05′ E., sixty-four meters and thirty-three centimeters (64.33) to point "E"; thence N. 89° E., seventy-one meters and nineteen centimeters (71.19) to point "F"; thence N. 79° 10′ E., seventy-two meters (72) to point "G"; thence S. 82° E., forty-two meters and sixty-two centimeters (42.62) to point "H"; thence S. 26° 08′ E., twenty-two meters and
139 seventy-two centimeters (22.72) to point "I"; thence S. 70° 30′ E., forty-eight meters and nine centimeters (48.09) to point "J"; thence S. 51° 05′ E., thirty-eight meters and forty-two centimeters (38.42) to point "K"; thence S. 47° 55′ E., seventy-one meters and forty-four centimeters (71.44) to point "L"; thence S. 48° 55′ E., eighty-one meters and eight centimeters (81.08) to point "M"; thence S. 43° 25′ E., thirty-three meters and seventy-four centimeters (33.74) to point "N"; thence S. 43° E., thirty-seven meters and sixty-eight centimeters (37.68) to point "O"; thence S. 48° 48′ E., nineteen meters and twenty centimeters (19.20) to point "P"; thence S. 38° 15′ E., twenty-one meters and forty-nine centimeters (21.49) to point "Q"; thence S. 45° 50′ E., thirty meters and nine centimeters (30.09) to point "R"; thence S. 18° 10′ E., ninety meters and thirty centimeters (90.30) to point "S"; thence S. 57° 05′ W., ninety-one meters and eighty-four centimeters (-1.84) to point "T"; thence S. 49° 30′ W., sixty-two meters and sixty centimeters (62.60) to point "U"; thence S. 39° 30′ W., nineteen meters and five centimeters (19.05) to point "V"; thence S. 26° 47′ W., twenty-seven meters (27) to point "W"; thence S. 13° 27′ W., seventy-two meters and ninety-seven centimeters (72.97) to point "X"; thence N. 53° 50′ W., six hundred twenty-eight meters (628) to the point of beginning; containing one hundred ninety-one thousand six hundred forty-seven square meters
140 and fifty square centimeters (191,647.50 sq. m.). Lines from point "A" to "D" follow the S. W. side of Calle Balic-

Balic, from "D" to "G" and from "R" to "S", respectively, S. and S. W. sides of the Santa Mesa high-road, and from "X" to "A" the divisionary line between the City of Manila and the Province of Rizal.

Parcel "I."—Situated in Santa Mesa high-road, barrio of San Isidro. Bounded on the N. E. and S. E. by lands of the Santa Mesa Estate, and S. W. by the Santa Mesa high-road. Beginning at a point marked "A" on plan, and on the ground by a stone monument, being N. 88 55′ E., four hundred twenty-five meters (425) from the boundary monument No. 29 of the City of Manila; and from this point "A" N. 18° W., seventy-two meters and fourteen centimeters (72.14) to point "B"; thence S. 50° E., eighty-four meters and five centimeters (84.05) to point "C"; thence S. 68° 45′ W., forty meters and seventy-five centimeters (40.75) to the point of beginning; containing one thousand four hundred and forty-eight square meters and eighty-one square centimeters (1,448.81 sq. m.). Line from point- "A" to "B" follows the N. E. side of the Santa Mesa high-road. All point- referred to in the described four parcels are marked on plan; bearings magnetic; date of survey, April and May, 1906.

141 Therefore, it is ordered and decreed that the estate in question be registered, in accordance with the Land Registration Act, in the name of said Benito Legarda, subject, however, to any lien, which may be subsisting and to the encumbrances referred to in Section 39 of said Act, and to * * *

Given by the Hon. W. L. Goldsborough, Judge-at-Large of the said Court of Land Registration, in Manila the 9th day of August, 1907, at ten o'clock a. m.

To which I certify:

[Seal of the Court.]

(Sgd.) A. K. JONES,
Clerk of Court.

A true copy which I hereby certify.

Issued this 7th day of September, 1908.

____ ____,
Clerk of Court.

(Copy.)

On April 10, 1912, the complaint was amended as follows:

142 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Case No. 9436.

W. BORCK, Plaintiff,

vs.

BENITO LEGARDA and BENITO VALDEZ, Defendants.

Comes now the plaintiff in the above-entitled case, and, by leave of the court first had, amends the petition on file herein in the following manner, to-wit:

1. By adding at the end of Paragraph 4 the following words: "Which said option to purchase was contained in a private document and was in words and figures substantially as follows:

Manila, December 4, 1911.

Mr. W. Borck, Real Estate Agent, Manila, P. I.

SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 meters of land, for the price of its assessed government valuation.

(Sgd.) B. VALDES."

143 2. By changing Paragraph 1 of the prayer to read as follows:

"1. That the defendant Valdez be ordered and directed to execute whatever formal documents may be necessary in evidence of the contract or obligation referred to in this petition and to embody same in a proper public document, and that thereupon the defendant Legarda either directly or by hand of the defendant Valdez be ordered and directed to convey to the plaintiff by good and sufficient warranty deed the said hacienda de Nagtahan as described in this petition, in fee simple."

Manila, April 10, 1912.

(Sgd.) THOS. D. AITKEN,
(Sgd.) HARTFORD BEAUMONT,
Attorneys for Plaintiff.

On March 30, 1912, defendant D. Benito Valdes, filed a demurrer on the following grounds:

1st. That there is misjoinder of parties as Benito Valdes was erroneously included as a party defendant.

2nd. That plaintiff does not state facts sufficient to constitute a cause of action against the defendant Benito Valdes.

3rd. That the complaint is ambiguous, unintelligible and vague.

On April 11, 1912, the Court overruled the demurrer of the defendant Benito Valdes by an order of the following tenor:

144 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Judicial District of Manila.

Civil Cause No. 9436.

W. BORCK, Plaintiff,

vs.

BENITO LEGARDA et al., Defendants.

Order.

This is a demurrer in behalf of the second defendant, on the ground that the complaint fails to show that plaintiff is entitled to relief against him. But paragraph 4 of the complaint alleges that the option upon which the complaint appears to be based, was signed by said defendant; and we think that sufficiently connects him with the cause of action to make him a proper party, especially in view of the provisions of Code of Civil Procedure, section 114. He may not be strictly a necessary party, though only the trial can determine that; but if he is only a proper party plaintiff has a right to have him in court in order that any interest which he may have may be adjudicated in one action.

The demurrer is therefore overruled. By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., April 11, 1912.

145 On April 15, 1912, the defendant Benito Valdes filed his answer as follows:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA and BENITO VALDES, Defendants.

Answer.

Now comes the defendant Benito Valdes and, answering the complaint against him in the above-entitled cause, alleges:

That he denies each and every allegation contained in paragraphs from 4 to 12, inclusive, except those as are admitted in the especial defense of this defendant.

And as especial defense, alleges:

1st. That the option offered by him to the plaintiff was without consideration, and said option was subject to the approval of the
146 defendant Sr. Legarda.

2nd. That the defendant Sr. Legarda did not approve said right of option, it becoming thereby of no force and effect, as per understanding and agreement had between the plaintiff and this defendant.

3rd. That the right of option offered by the defendant to the plaintiff was not accepted by the latter within a reasonable time, nor during the time said offer was in force, in accordance with the conditions agreed upon between the parties.

4th. That the defendant B. Valdes signed the letter dated December 4 offering the plaintiff the right of option, which is the origin of this action, through fraud practiced by the plaintiff with regard to the contents of said letter by stating to him that same was in conformity with the agreement of both parties, otherwise this defendant would not have signed the said letter.

5th. That plaintiff, on and before January 19 of this year, was and still is an insolvent and has never proved that he was solvent, neither did he offer to pay in cash the amount of the purchase price as both parties had agreed.

6th. That the defendant Benito Valdes is but an attorney-in-fact of the defendant Benito Legarda having no interest whatever in the subject matter of this action; and has always acted in accordance with the instructions of his codefendant Sr. Legarda.

147 Wherefore, defendant prays the Court to dismiss the complaint as regards this defendant, with costs against the plaintiff.

Manila, April 15, 1912.

ESCALER & SALAS,
(Sgd.) By JOSÉ ESCALER.

SINGSON, LEDESMA & LIM,
(Sgd.) By V. SINGSON ENCARNACIÓN.

Copy furnished the attorney for plaintiff, Mr. Beaumont, this 15th day of April, 1912.
(Sgd.) J. E.

The date for hearing having come and all evidence, oral and documentary, having been admitted on February 12, 1913, the Court of First Instance before which this cause was tried, rendered its judgment, to wit:

148 UNITED STATES OF AMERICA,
Philippine Islands:

Manila, February 12, 1913.

In the Court of First Instance for the Judicial District of Manila.

(9436.)

W. BORCK, Substituted by HARTFORD BEAUMONT, Plaintiff,
versus
BENITO LEGARDA et al., Defendants.

Syllabus.

1. An instrument signed by an attorney in fact, with power to convey real estate, and reciting "I herewith give you an option for three months to buy the property of" the principal for a certain sum, becomes, when confirmed within said period, a contract to convey.

2. Under Code of Civil Procedure, section 347, a written confirmation of such instrument constitutes a sufficient tender of performance.

3. Such instrument being incomplete in failing to disclose the attorney's authority, reference to the power previously executed is no infringement of the parol evidence rule.

4. But such rule is infringed by an attempt to contradict the plain terms of such instrument and to show the existence of con-
149 ditions inconsistent with its recitals, as c. g., that it shall not become effective until submitted to the principal, or that the consideration shall be paid forthwith.

5. For while incomplete provisions of a written instrument may be supplemented, and ambiguous ones explained, express recitals cannot be contradicted.

6. A party sui juris to a written instrument who signs it voluntarily after reading, or having an opportunity to read, the same, cannot be heard to complain that he is ignorant of its terms.

7. An acceptance does not become conditional merely by requiring the exhibition of title papers relating to the subject matter.

8. Failure to perform after tender entitles the contractee to a decree of specific performance, which is as well established in the Spanish, as in the English, law.

Mr. T. D. Aitken and Mr. Hartford Beaumont, for the Plaintiff.

Messrs. Hausserman, Cohn & Fisher, by Mr. Cohn, for Defendant Benito Legarda.

Messrs. Escaler & Salas, and Messrs. Singson, Ledesma & Lim, by Mr. Escaler, for Defendant Benito Valdez.

150 *Decision.*

This is an action for the specific performance of a contract to convey certain real estate in the City of Manila, of which defendant Legarda is the owner. On December 20, 1907, said defendant executed a public document constituting a power of attorney, authorizing his co-defendant, inter alia:

"Comprar, vender, permutar, ceder o admitir en pago o por vía de compensación o de otra manera adquirir o traspasar toda clase de bienes, muebles, semosientes, inmuebles, géneros, frutos, mercancías, efectos, derechos y acciones por los precios y con las condiciones que estimen; percibiendo o satisfaciendo el importe por adelantado, al contado o a plazos, dando o recibiendo las cosas que fueren objeto de cesión o permuta, otorgando las correspondientes escrituras de adquisición o traspaso, obteniendo de ellas copias o testimonios y solicitando la inscripción de los inmuebles en el Registro de la Propiedad que corresponda."[1]

The revocation of this power could be affected only by recalling the old instrument (Civil Code, Art. 1733) or appointing a new agent (Art. 1735), and it is not claimed that either of these modes was ever sought to be pursued. An attempt is made to show certain inconsistent verbal instructions, but even if such evidence were admissible, the public document could not *this* be revoked or contradicted.

151 On December 4, 1911, the last named defendant executed and delivered to plaintiff herein the following instrument:

In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtajan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed government valuation. (Exh. E.)

There is some discussion in the briefs as to whether this instrument constituted a mere offer to sell or an actual contract of option. In terms it purports to be the latter, and in fact recites the acceptance of a "request" or offer, by the plaintiff. But viewing the instrument as in itself no more than an offer it was at least a continuing one, "for three months" and as it is not claimed to have been withdrawn during that period, the plaintiff could, at any time within that limit, enter into an actual contract, if it were not such already, by mere acceptance.[2]

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[1]Exh. A, attached to complaint, not denied under oath in either answer and therefore admitted as to its "genuineness and due execution." (Code C. P., sec. 103; Merchant vs. International Banking Corp., 6 Phil. Rep., 314.)

[2]Civil Code, art. 1262; Anson on Contracts, 34; 9 Cyc., 286.

Counsel for defendant Legarda contends (p. 11) that "there has never been an acceptance." It appears, however, that on January 19, 1912, plaintiff executed and delivered[3] the following letter (Exhibit G):

152 I hereby advise you that I am ready to purchase the hacienda Nagtajan, situated in the districts of Sampaloc and Nagtajan, Manila, and in the Province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March, 1912, provided all documents in connection with the hacienda Nagtajan, as Torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection, and if such papers have been found in good order.

This letter is characterized as "a counter offer," and Civil Code Art. 1500 cited in support of the contention that cash payment should have been provided for. But that article merely requires the purchaser "a pagar el precio de la cosa vendida en el tiempo y lugar fijados por el contrato." Now, the first instrument (Exh. E) gave plaintiff "three months to buy the property" dating from December 4, 1911, and consequently expiring on March 4, 1912. This necessarily allowed the plaintiff until the last named date for payment, and as his letter (Exh. G) provides for payment before the expiration of said period, it in no way modifies or changes the option, but coincides therewith. A payment on or before March 4, 1912, would have been a "cash payment" even had Exh. E required such.

Nor does plaintiff seem to have intended or effected a modification or counter proposal by merely requiring that the title papers "be immediately placed at my disposal for inspection." The evidence (p. 51, Exh. P) shows that this was really the requirement of a prospective purchaser (if not also that of defendant Valdez

153 himself (pp. 32, 33)) who was ready to pay plaintiff an advance of ₱73,000, and it seems to be one which both the latter and plaintiff had a right to insist upon. As counsel himself concedes, "an acceptance of an offer for real property implies as a necessary condition the transfer of a good title." But surely the purchaser is entitled to determine whether this condition has been complied with before he proceeds to final performance. The implied condition of giving good title includes necessarily the right to inspect the title papers, and the fact that plaintiff may have had information from other parties on the same subject did not, in our opinion, deprive him of such right. It may be that plaintiff could have secured the desired information from the registry or from private parties, but we do not think that he was obliged to deny himself the benefit of sources which the vendor might, and ordinarily does, provide. Besides, the mention of "leases" indicates that plain-

[3]This letter was produced, among others, by defendant Valdez at the trial, as one which he had received from plaintiff (Evidence, pp. 14-15).

tiff may have thought there were some papers relating to the property which had not been registered. He had the right not only to a "good" title, but also to a clear one, free of all incumbrance.

Four days after the date of Exhibit G, plaintiff wrote the following letter (Exh. J):

I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagtajan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) Pesos, Ph. C., ten days after the Torrens title deeds and all papers in connection with the hacienda
154 have been placed at my disposal for inspection and those documents and papers have been found in good order.

Counsel objects:

That there is naught in the record to disclose that said letter was received by the defendants or either of them within the time limited in said offer.

But defendant Valdez was interrogated regarding this letter (p. 15) and did not deny having received it, altho given that opportunity. As the letter was written at least as early as its date (p. 31) which was some six weeks before the expiration of the option, it seems a fair inference that if defendant Valdez had not received it within said period, he would have so stated, specifically.

However, proof on that point hardly seems essential, since, as we have seen, Exhibit G appears to contain all the elements of an acceptance. We certainly cannot agree with counsel that it was in any sense a "rejection." The most that can be said of Exhibit J is that it proposes terms even more favorable than the option itself, and of this defendants cannot complain, nor had they, at the time of receiving it, withdrawn the option or refused to perform.

But it is contended that even if the option of offer of December 4, 1911, were actually accepted by plaintiff, it "is the contract of Benito Valdez * * * and of no other person," and the parol evidence rule embodied into Code C. P., sec. 285, is invoked for this contention. That section, however, expressly admits "other evi-
155 dence of the circumstances under which the agreement was made, or to which it relates, or to explain an intrinsic ambiguity." Now, the said instrument is clearly one which cannot be interpreted without knowledge of such "circumstances." The signer of it agrees to sell not his own property, but another's, and this he could do only by virtue of matters appearing aliunde, to-wit: in the power of attorney (Exh. A). Without such extrinsic evidence, Exhibit E is clearly incomplete, if not also ambiguous, as regards the identity of the person charged and the amount to be paid (assessed value), but not as regards any other matter. Section 285 does not, therefore, exclude evidence as to the agent's authority[4] for that is left unexplained, but it does exclude other evidence that the option was not to become effective, until first submitted to the principal, or

[4]Curran vs. Holland, 141 Cal., 437, decided under a Code from which section 285 is taken; Tan Machan vs. Trinidad, 3 Phil. Rep., 686; Allen vs. Pink, 4 M. & W., 140; Thayer's Cas. on Ev., 830.

that the price was to be paid at once, for on that point the instrument is not ambiguous, but clear and positive in stating "I herewith give you an option for three months" and to admit such other evidence would contradict and nullify its express recitals.[5]

156 Even less applicable seems section 335 of the same Code. which expressly recognizes a "note or memorandum * * * subscribed by the party * * * or by his agent[6]." To interpolate after this phrase the words "in his own name" would be judicial legislation.

Civil Code Article 1717 expressly excepts "el caso en que se trata de cosas propias del mandante." As it is conceded that the property in question is that of the principal, this exception clearly includes the present case.

As to the objection to the joinder of the agent, we may repeat here what was said in overruling his demurrer, that:

He may not be an entirely necessary party, tho only the trial can determine that, but if he is only a proper party, plaintiff has a right to have him in court, in order that any interest which he may have may be adjudicated in one action.

We think the trial discloses that either the principal or the agent may be compelled to execute the conveyance, but even if the latter's joinder were improper, that would not relieve the principal of liability.

Paragraphs 4 and 5 of the complaint, quoted in defendant Legarda's brief, must be read in connection with the amendment (rec. p. 76) and paragraphs 2 and 3, which distinctly allege his ownership of the property and his co-defendant's authority to act. These

157 averments, followed as they are by another to the effect that the agent executed the instrument which now appears as Exhibit E, and which discloses on its face that the said agent undertakes to convey property of the principal, seem to constitute a sufficient statement of a cause of action against the latter.

It being conceded that defendant Valdez executed Exhibit A voluntarily, he could not now be heard to say that he did so ignorantly.[7] If he really did not understand English, or if he desired to impose

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[5]To Poel vs. Shutt, 57 Neb., 592, 600, a case in many features like this. Cf. Naumberg vs. Young, 44 N. J. L., 331; Thayer's Cases on Ev., 849.

[6]Cf. Cock vs. Bringier, 19 La. Ann., 183; Paul vs. Lauderdale, 46 N. Y., 70.

[7]Kennedy vs. Phosphate Co., 52 Am. Rep., 669; Banfield vs. Banfield, 24 Oreg., 571; Grieve vs. Grieve, 15 Wyo., 358; Robinson vs. Glass, 94 Ind., 211. In Clack vs. Wood, 14 Tex. Civ. App., 400, the Court, in denying reformation, said:

"Ignorance of the contents of the instrument in question on the part of Blackmore, according to his own testimony, was due to inattention and the failure to read it. See the able opinion of Justice Head in Williams vs. Rand, 9 Tex. Civ. App., 631, and the authorities there cited."

the condition that his principal should first be consulted, he should not have signed the instrument. We must find, however, that the evidence, (pp. 27, 45, 52, 53, 57, 58, 60, 74, 75) is sufficient to show that he did sign it understandingly.

The objection that there has been no breach of the contract because plaintiff has failed to present an "offer in writing," which is made the equivalent of actual tender by Code Civ. Proc. section 347, repeats in different form the contention that plaintiff's acceptance was insufficient, and what we have said as regards Exhibit G
158 applies. That letter contained "an offer to pay a particular sum of money," to-wit: ₱307,000, for the property in question, and as the latter has never been conveyed, it follows that the contract is broken.

II.

Under Civil Code, Article 1124, plaintiff had the option to seek rescission or performance, with indemnity. He has elected the latter remedy, but we do not think he has established a right to recover as damages more than the property itself, and its net income, if any, since the date of tender (Jan. 19, 1912); unless for some reason a conveyance has now been rendered impossible, in which event plaintiff would at least be entitled to recover the profit of ₱73,000 which the undisputed evidence (p. 51, Exh. P) shows he would have made under timely performance. We find no proof that a substantially similar price could not be realized now, and without such proof, that profit must be treated as the rightful alternative to specific performance, tho not as absolute damages.

The claim of damages on the ground that the breach of the contract caused plaintiff's insolvency, appears untenable, by virtue of Civil Code Article 1107, for such result could hardly have been foreseen by the defendants. As to loss of time, that was incidental to a transaction of this magnitude, which even had defendants performed would have required a large amount of plaintiff's
159 time and attention. We do not think that defendants could be charged for that item, more than for attorney's fees.

But the principal relief sought in this action is not damages, but specific performance, and as the subject matter is real property, plaintiff is entitled to that relief, since, as we have found, he has a valid contract. For the remedy of specific performance, tho well known in the English law[8] is not peculiar to that system. It has a well established place in the Spanish law, having been recognized as early as the Forum Judicum[9] carried into the present Civil Code[10],

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[8]See appellee's brief in Te Poel vs. Shutt, 57 Neb., 595.

[9]"He who receives earnest money for the sale of anything, can be forced to fulfill his contract." (Book V, Title IV, Law IV.)

[10]Arts. 1124, 1279, 1451. Cf. Code of Civ. Proc., section 90 (3), and 784 (30).

and applied by the Spanish Supreme Tribunal[11] and by the Supreme Court of the Philippines[12].

To recapitulate, we find from the evidence:

(1). That the instrument Exhibit E, as supported by Exhibit A, and confirmed by Exhibit G, constitutes a contract by the principal defendant to convey the plaintiff the property therein described.

(2). That plaintiff made a sufficient tender of performance
160 on his part, in accordance with Code of Civil Procedure, section 347.

(3). That the defendants have failed to execute such conveyance in accordance with said contract, and that plaintiff is entitled to the specific performance thereof, and to the net income, if any, therefrom since January 19, 1912, but that he has not shown sufficient loss otherwise to entitle him to additional damages unless it subsequently appear that a conveyance cannot be made.

It is accordingly considered and decreed that upon the payment by the plaintiff to the principal defendant, Benito Legarda, or to the Clerk of this Court, of the sum of Three Hundred and seven Thousand pesos, the said defendant, or his co-defendant and attorney in fact, shall execute and deliver to said plaintiff a good and sufficient conveyance, free of all incumbrance, of the property described in Exhibits B and C, attached to plaintiff's complaint, so far as the same is included within the terms of Exhibit E; and that upon said defendants' failure to execute such conveyance within a reasonable time after such payment, the Clerk of this Court shall execute one, and the same, together with this decree, shall constitute such a conveyance; but if for any sufficient reason such conveyance cannot now be made, plaintiff shall have and recover from defendant Legarda, as alternative damages, the sum of Seventy three thousand (₱73,000.00) Pesos, with interest thereon at 6% per annum from March 13, 1912.

161 Defendants are further decreed to render an accounting within thirty days of the income and profits of said property since January 19, 1912, and to pay the costs of this proceeding.

By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., February 12, 1913.

On February 15, 1913, the defendant Benito Valdes filed his exception against the decision of the court for the following reasons:

1st. That the proof does not sufficiently justify the decision of the court;

2nd. That said decision is contrary to law; and

3rd. That the findings of facts contained in the said decision are openly and manifestly contrary to the weight of the evidence.

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[11]Sentence of November 19, 1891.

[12]Goyena vs. Tambunting, 1 Phil. Rep., 490; Tabigue vs. Green, 11 Phil. Rep., 102; Doliendo vs. Depiño, 12 Phil. Rep. 758.

On April 23, 1913, the motion for new trial was overruled and the defendant Benito Valdes, on April 25, this year 1913, took exception against the order of the court denying the petition for new trial.

162 All the evidence, documentary and oral, offered by both parties during the trial are made a part of this Bill of Exceptions, to be forwarded to the Supreme Court with the other record of case.

In view of foregoing, we pray that this Bill of Exceptions be approved and forwarded to the Supreme Court with all the evidence, documentary and oral, offered during the trial.

Manila, May 5, 1913. ESCALER & SALAS,
(Sgd.) By JOSÉ ESCALER,
Attorneys for Defendant Dr. Benito Valdes.

145 Plaza Santa Cruz, Manila.

Copy received this 5th day of May, 1913.
(Sgd.) HARTFORD BEAUMONT,
(Sgd.) THOS. D. AITKEN, *Attorneys for Plaintiff.*
(Sgd.) HAUSSERMANN, COHN & FISHER,
Attorneys for Defendant D. Benito Legarda.

163 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Civil Case No. 9436.

W. BORCK, Plaintiff,
versus
BENITO LEGARDA and BENITO VALDES, Defendants.

Now come the undersigned attorneys and to the court respectfully pray that the amendment to the Bill of Exceptions be admitted, to the effect that page 45 thereof be substituted by the following pages atached to this motion.

Manila, June 2, 1913.
ESCALER & SALAS,
(Sgd.) By PERFECTO SALAS RODRIGUEZ,
Attorneys for Defendant Dr. Benito Valdes.

145 P. Santa Cruz, Manila.

Copy received, this 2nd day of June, 1913.
(Sgd.) HARTFORD BEAUMONT,
" THOS. D. AITKEN,
Attorneys for Plaintiff.
(Sgd.) HAUSSERMANN, COHN & FISHER,
By CHARLES C. COHN,
Attorneys for Defendant D. Benito Legarda.

Filed this 2nd day of June, 1913, at 11:30 a. m. (Sgd.) J. McMicking, Clerk of Court.

164 On February 15, 1913, the defendant Benito Valdes filed his exception against the decision of the court for the following reasons:

1st That the proof does not sufficiently justfy the decision of the court;

2nd. That said decision is contrary to law; and

3rd. That the findings of facts contained in the said decision are openly and manifestly contrary to the weight of the evidence.

On April 23, 1913, the motion of new trial of the defendant Benito Valdes was overruled by an order of the Court as follows:

165 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Branch II.

Civil Cause No. 9436.

WALTER BORCK, Substituted by HARTFORD BEAUMONT, Plaintiff,

versus

BENITO LEGARDA et al., Defendants.

Order.

For the sake of clearness and logical arrangement, we shall consider defendants' objections to the decision in the order in which the points objected to appear in the decision itself, so that the latter may be considered more intelligently in connection herewith.

(1). "The Court erred in holding that it is conceded that the property in question is that of the principal. * * * The allegation that the property in question belongs to the defendant Legarda is denied in the answer." (Objection 9.)

But where is such denial? Defendant Legarda denies only "párrafos 3 al 12, ambos inclusive, de la demanda," and de-
166 fendant Valdez denies even less, to-wit: "párrafos 4 al 12." But paragraph 2, which is not denied by either, alleges:

"Que el demandado Benito Legarda es el dueño absoluto de la Hacienda de Nagtajan, que más adelante aqui se describe."

It might be added that even if this averment had been denied, the record[1] shows the ownership of defendant Legarda, and that

[1]P. 2, and Exhibit A of the evidence; Exhibits B and C, attached to the complaint.

had it been otherwise, he would hardly have defended the case at all, but would have filed a disclaimer, and would surely not have urged as a defense that the option was not submitted to him.

(2). "The Court erred in considering in evidence the power of attorney from Benito Legarda in favor of Benito Valdez. The decision refers to this document as an exhibit in the case under the title of 'Exhibit A.'" (Objection 7.)

On the contrary, the decision refers to it as

"Exhibit A, attached to complaint, not denied under oath in either answer, and therefore admitted as to its 'genuineness and due execution.' (Code C. P. sec. 103; Merchant vs. International Banking Corp., 6 Phil. Rep., 314.)"

We can hardly believe this statement ambiguous or that counsel understood us to mean "Exhibit A" of the evidence.

The objection continues:

167 "The power of attorney attached to the complaint as an exhibit thereto, is not here in evidence, having never been offered nor admitted in evidence."

Would counsel have us ignore Code C. P. section 103, and render judgment without "considering" the pleadings?

However, the question is academic, because defendant Valdez expressly states (pp. 2, 15, 16, 18) that he does hold such power of attorney.

(3). "The Court erred in holding that the alleged offer (Exhibit E) was open for acceptance on January 19, 1912. * * * Exhibit F, one of the most important items of the documentary evidence, has been wholly ignored." (Objection 3.)

And why should it not be "wholly ignored," after counsel for both defendants had prevented its admission in evidence? Not only did they fail to offer it themselves, but when it was offered by plaintiff, together with other exhibits, they objected (p. 23) and later renewed their objection (p. 65).

"On the ground that they are incompetent, immaterial, and irrelevant."

Ruling on this objection was reserved until we could scrutinize each proffered exhibit (which was impracticable in the midst of the trial), and when we did so, we found that Exhibit F was unsigned,[2] and unauthenticated, and bound no one; that no finding

168 could be based thereon, either for or against the plaintiff (because even if he had actually delivered it, no rights or liabilities could arise therefrom), and that it was consequently inadmissible. Since it had never been received in evidence, we did not consider formal exclusion necessary, but to save any further misunderstanding, we now formally sustain defendants' objections. They cannot consistently complain of this, and plaintiff has not sought to.

But even if we could have considered this unsigned paper, we do not think our conclusions should have been different. For if plain-

[2]As copied in counsel's brief (p. 5) it appears to be signed, but the original is not.

tiff had signed and delivered such a paper, it would have constituted neither a conditional acceptance nor a counter offer, but an independent proposal. Counsel apparently overlooks the distinction between these two classes of negotiations. At any rate, all of his authorities construe the former; they are cases where the vendee answered the offer directly but in doing so imposed other terms than those of the offer. But in the leading case[3] relied upon by counsel, the distinction is thus drawn between such answers and a paper like Exhibit F:

"The mention, in both telegram and letter, of the date and the terms of the defendant's original offer, shows that the plaintiff's order was not an independent proposal, but an answer to the defendant's offer, a qualified acceptance of that offer, varying the number of tons, and therefore in law a rejection of the offer."

169 Now, Exhibit F does not purport to be anything more than "an independent proposal;" it makes no reference to the option at all, and mentions no previous offer, but on the contrary reads as if it were the first offer made during the negotiation. Besides, it had not been rejected when Exhibit G, the final acceptance, was delivered, and in another[4] of counsel's authorities, the Court

"Would not say that a person might not accept an offer with qualifications upon one day, and upon the next day, and before his counter proposition is rejected, accept unconditionally."

But, the Civil Law, (under which this question of substantive law would have to be decided were it actually before us upon competent evidence) seems to be less liberal to the proposer than the Anglo-American law to which alone defendant's counsel resorts. Under the Civil Law[5] the proposer seems to have merely the right to withdraw in case of conditional acceptance or counter offer. Thus Manresa[6] says that "una nueva proposición (i. e. counter-offer) deja el contrato en esta de proyecto," and we have been cited to no Civil Law authorities nor have we been able to find any which

170 treats it as a rejection ipso facto. It is undisputed here (p. 39) that the option never was withdrawn, so that even the question of the right to withdraw is purely academic.

(4) "The Court erred in holding that Exhibits G, J, and K were acceptances of an offer absolute, and not conditional." (Objection 5.)

"The Court erred in finding that the plaintiff merely required that the title papers 'be immediately placed at my disposal for inspection.' * * * Compare his letter of two days before (Exhibit F) wherein he calls for the 'delivery of a Torrens Title free of all encumbrances as taxes and other debts.' This letter is a

[3]Minn. Co. vs. Columbus Co., 119 U. S., 149, 30 Law. Ed., 376.
[4]Ortman vs. Weaver, 11 Fed. Rep. 361.
[5]Spanish Civil Code, Art. 1262; Manresa's Gloss. of same VIII, 589-600; Sanchez Roman, Gloss., IV, 241; Cf. Louisiana Civil Code, Art. 1805, last phrase.
[6]Commentaries, VIII, 599.

requirement for the conveyance of a good title. The proviso of Exhibits G, J, and K is not." (Objection 4.)

We are unable to see any substantial difference between the demand for a "title free of all encumbrances, as taxes and other debts" and one for "all documents in connection with the hacienda Nagtajan, as deed, contract of leases and other matters" in order to be certain that he was getting such title. Surely the right to demand the title included the right to ascertain if the demand has been complied with, for otherwise the right would be worthless. "Leases and other matters" (to which so much objection is now raised) "in connection with the hacienda" might seriously interfere with plaintiff's enjoyment of the title. For even an unrecorded lease gives the lessee some rights[7], and plaintiff was not obliged
171 to buy a lawsuit with possible holders of such a lease. And the record contains indications at least, that this was no mere possibility. Plaintiff's affidavit of March 27, 1912 (less than four weeks after the option expired) and which we do not find anywhere controverted, recites (p. 40):

"That the defendant, Benito Valdez, acting under the power of attorney set out as Exhibit A of the petition in his case, is occupied almost daily in making leases of parcels of land comprised within the limits of the estate in controversy. That these leases are for various periods and on various terms, and plaintiff fears that, unless restrained by order of the Court, the said defendant may lease, encumber or convey the estate or a valuable portion thereof to innocent third parties to the prejudice and irreparable damage of the plaintiff."

We think that a fair interpretation of Exhibits G, J, and K shows nothing more than an intention to require a marketable title, such as his then waiting purchaser would accept. (Ev., p. 51, Exh. O, P.)

Now the right to receive such a title was just as much a part of the option as if defendants had inserted it there.

"In every contract for the sale of lands there is an implied agreement on the part of the vendor to make good title for the lands to the vendee."[8]

172 "An agreement to sell at a sound price, without reservation or exception, implies that a marketable title free of in-

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[7]"El arrendatario podrá exigir que se le deje recoger los frutos de la cosecha que corresponda al año agrícola corriente y que el vendedor le indemnice los daños y per juicios que se le causen." (Código Civil Español, Art. 1571.)

Moreover, the lease might validly eliminate the purchaser's right to terminate it. (Id.)

[8]Meyer vs. Madreperla, 68 N. J. L., 258, 96 Am. St. Rep., 536 (citing Lounsbery vs. Locander, 25 N. J. Eq., 554). Cf. Ryder vs. Johnson, 153 Ala., 482, 45 So., 181.

"Nor is an acceptance conditional or variant from the offer where it contains a term or condition which 'is a mere reiteration of one expressed or implied by law in the offer." (39 Cyc., 1199, 1200.)

cumbrances will be passed to the vendee upon compliance with his obligations."[9]

It will hardly be claimed that a request for the inspection of "leases and other matters * * * in connection with the hacienda" constitute more of a condition than an acceptance "subject to the title being approved by my solicitor"[10] or even than a demand to "take care of delinquent taxes;" yet these have been held insufficient to deprive an acceptance of its unconditional character.

173 (5). "The Court erred in deciding that the offer (Exh. E) 'necessarily allowed the plaintiff until the last named date (viz., March 4, 1912) for payment.'" (Objection 1.)

"The Court erred in holding that a payment on or before March 4, 1912, would have been a cash payment." (Objection 2.)

"The Court erred in holding that an instrument reading 'I herewith give you an option for three months' is a conclusive grant of terms of payment, negativing Art. 1500, Civil Code, and excluding evidence that the price was to be paid at once." (Objection 8.)

If we understand counsel's theory of the option, it is that defendant really said to plaintiff: "I hereby give you an option for three months, but you must pay me at once." Where, then, did plaintiff get his "option for three months"? We must remember that under counsel's theory the slightest variation in terms between the acceptance and the option constituted a "rejection" of the latter, and that

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[9]Curtis Co. vs. Interior Co., 137 Wis., 341, 347, citing Young vs. Wright, 4 Wis., 144; Wright vs. Young, 6 Wis., 127; Bateman vs. Johnson, 10 Wis., 1, 3; Arentson vs. Moreland, 122 Wis., 167, 175; Davis vs. Henderson, 17 Wis., 105, 107; Taft vs. Kessel, 16 Wis., 273, 277; Drake vs. Barton, 18 Minn., 462; Dwight vs. Cutler, 3 Mich., 566; Sibbley vs. Spring, 12 Me., 460; Hill vs. Hobart, 16 Me., 164; Shreck vs. Pierce, 3 Iowa, 350; Bartle vs. Curtis, 68 Iowa, 202; McGuire Bros. vs. Blanchard, 107 Iowa, 490; Swan vs. Drury, 22 Pick., 485; Van Epa vs. Schnectady, 12 Johns, 436, 442; Dearth vs. Williamson, 2 Serg. & R., 498; Swayne vs. Lyon, 67 Pa. St., 436.

"A Good Title Means not merely a title valid in fact, but a marketable title which can be sold or mortgaged to a person of reasonable prudence: Moore vs. Williams, 115 N. Y., 586, 12 Am. St. Rep., 844. A marketable title is one free from reasonable doubt: Vought vs. Williams, 120 N. Y., 253, 17 Am. St. Rep., 634; Hedderly vs. Johnson, 42 Minn., 443, 18 Am. St. Rep., 521. See also Mathews vs. Lightener, 85 Minn., 333, 89 Am. St. Rep., 558; Barnard vs. Brown, 112 Mich., 452, 67 Am. St. Rep., —; Sims vs. McElroy, 160 N. Y., 156, 73 Am. St. Rep., 673; Simon vs. Vandeveer, 155 N. Y., 377, 63 Am. St. Rep., 683." (Note to 96 Am. St. Rep., 545.)

[10]Hussey vs. Horne-Payne, 4 App. Cas. (Eng.), 311, where in the House of Lords, disapproving a different construction below, the Lord Chancellor (Cairns) said: "I am disposed to look upon the words as meaning nothing more than a guard against its being supposed that the title was to be accepted without investigation, as meaning in fact the title must be investigated and approved of in the usual way, which would be by the solicitor of the purchaser."

it could be withdrawn at any time. If in addition plaintiff was obliged to pay cash at the moment of acceptance the phrase "for three months" was only a delicious bit of humor inserted in order to delude plaintiff and perpetrate a practical joke upon him. For on the one hand he would need to hasten his acceptance lest the option be withdrawn—or declared rejected; on the other hand, the moment he accepted he lost the option unless he paid. In either event the "three months" meant nothing, and between the Scylla and Charybdis thus created the supposed contract becomes a will-o'-the-wisp.

174 We cannot assume that either party intended to participate in such a hollow farce. It is our duty so to construe contracts as to make the parties mean what they say, and when one of them gives an "option for three months" we must understand him to allow that full period in which to comply with the option or in other words to pay the price. If plaintiff had tendered no acceptance of any kind until March 4, and the option had not meanwhile been revoked, will anyone deny that a contract would have resulted? And was it any less advantageous to defendant for plaintiff to accept on January 19, at the same time availing himself of the balance of the "three months" for payment?

Plaintiff testifies (p. 27) that defendant Valdez, before signing the option, said:

"I don't want you to put in the assessed valuation, in figures, because you have three months' option, and in that three months the Government might raise or lower the assessment." (Cf. p. 29.)

This is quite in accord with the previous conduct of said defendant; and that he, as well as plaintiff, intended that the latter should have three full months in which to make payments is further demonstrated by the original option (Exh. A), written by said defendant himself, after corresponding with his co-defendant (p. 24), nearly a year before he executed Exhibit E, and in which he says, inter alia:

"Concedo a Vd. la oportunidad de hacer efectiva dicha compra en el plazo de TRES MESES."

175 The last two words are capitalized in the original, and it thus unmistakably appears that this feature of the contract originated with defendant, being merely carried over into the new option (Exh. E) and that he intended to allow the whole period, not merely the acceptance, but "hacer efectiva dicha compra"—i. e., to carry out all of its details, including payment.

We are convinced, therefore, that the interpretation embodied in our previous finding, to the effect that plaintiff was given the entire "three months" to make payment, is the only one justified by the language of the option, the contemporaneous conduct of the parties, and the surrounding circumstances. Incidentally, this disposes of objection 6 to our finding (p. 5) that "Exhibit J * * * proposes terms even more favorable than the option itself" of which

[11]Curtis Co. vs. Interior Co., 137 Wis., 341.

defendants cannot complain. It also renders inapplicable paragraph 2 of Civil Code Art. 1500, relating to contracts where the time is not fixed. Here, as we construe it, the time was fixed for any date within the "three months."

(6). "The Court erred in holding that the words 'el caso en que se trata de cosas propias del mandante' is an exception which excludes the present case from the application of article 1717, Civil Code. Article 1717 provides that:

'When an agent acts in his own name, the principal shall have no action against the persons with whom the agent has contracted, nor said persons against the principal.

'In such case, the agent is directly liable to the person with whom he has contracted, as if the transaction were his own. The case involving things belonging to the principal is excepted.'

176 "The exception to which the Court has referred has application to the second proviso of the article and not to the first." (Objection 10.)

Well, suppose we apply it to the second "proviso" (paragraph?) only. Clearly that means that in "the case involving things belonging to the principal * * * the agent is not directly liable to the person with whom he has contracted;" and as there must be a responsible party it is necessarily the principal here, the defendant Legarda. It is really unimportant, in this case, to which paragraph we apply the exception, but we think it was plainly intended to affect both, and such appears to be the construction of the Spanish Supreme Tribunal.[12]

(7). "The Court erred in finding that the defendant Valdez signed Exhibit E understandingly."

We had hoped that counsel would not ask us to go into the details of the circumstances affecting the credibility of those parties who testified. We heard and observed them both, and our finding (p. 7) thereon was made advisedly. The "circumstances and considerations" of this feature of the case were reviewed not only in defendant's trial brief but in plaintiff's also, and the incident mentioned on pp. 6 and 7 of the latter's reply, occuring during the examination reported on pp. 6 to 8 of the evidence did not escape us; tho in justice to defendant's present counsel it should be noted

177 that this occurred before he came into the case. One who could write, as it is undenied (p. 26, 60) said defendant did, the carefully phrased English note appearing on Exhibit D, can hardly be heard to claim unfamiliarity with that language. Nor do we find a subsequent denial of plaintiff's testimony (p. 57) that his negotiations with said defendant were "mostly in English." On the contrary, when the latter was afterward recalled he testified (pp. 74, 75) that the plaintiff

"told me 'You give me an option.' Then I told him to make it. 'How is it going to be, in English or Spanish?' he asked me. I told him that it was immaterial to me," etc.

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[12]Sentence of May 1, 1900.

This exactly corroborates plaintiff's testimony (p. 27).

Without quoting more, we think this quite sufficient to remove any doubt as to said defendant's ability to understand the language of the option.

Plaintiff states positively (pp. 27, 58) that defendant read the option. But, of course, as we said in the decision (p. 7) if he had seen fit to sign it without reading, that would afford him no defense. It must be remembered also that the terms of this option were no different (respecting the points now in dispute) from those which defendant himself embodied into the option (Exh. A) which he had prepared somewhat less than a year earlier, after correspondence with his co-defendant (p. 24). That did not require the matter to be submitted to the principal nor that payment be made
178 immediately upon acceptance. On the contrary, as we have seen, defendants thereby voluntarily gave plaintiff the same period of three months "hacer efectiva dicha compra." We cannot think there could have been a mistake in signing an instrument substantially like that which he himself had prepared.

(8). "The Court erred in holding that Exhibit A is a valid tender of performance or the equivalent thereof in accordance with article 347, C. C. P. * * * Plaintiff has never yet said that he would accept and pay for a good and sufficient deed to the property if the same were tendered to him." (Objection 12.)

Well, he said "I am ready to purchase the hacienda * * * for the sum of ₱307,000.00 * * *. Full payment will be made on or before the third day of March, 1912," etc. (Exh. G.) To us this reads like "an offer in writing to pay a particular sum of money" which Code C. P., sec. 347 declares "equivalent to the actual production and tender of the money." Of course under the common law (which, however, has never prevailed here) not only money but legal tender, i. e., gold, had to be laid down before the vender, and the very purpose of Code C. P., sec. 347 was to dispense with that burdensome requirement and substitute a mere "offer in writing to pay." True, the offer must meet the requirement of the contract itself. If that requires payment immediately upon acceptance the offer must so provide. But when the option of which the vendee avails himself allows "three months," and the vendor shows that he intended this period "hacer efectiva dicha compra," an
179 offer to pay one day before the expiration of said period clearly complies with section 347. Certainly nothing in that section precludes the vendee from accepting the option, and tendering payment in the same instrument.

The requirement as to title papers has already been discussed under subdivision 4 above.

(9). "The Court erred in holding that plaintiff is entitled to recover ₱73,000 as the amount which he would have made under timely performance." (Objection 13.)

We have not held "that plaintiff is entitled to recover ₱73,000. We have merely declared that, under exceptional circumstances, not yet appearing, and not likely ever to appear in this case, he would be. Following is the passage referred to:

"We do not think he (plaintiff) has established a right to recover as damages more than the property itself, and its net income, if any, since the date of tender (Jan. 19, 1912); unless for some reason a conveyance has now been rendered impossible, in which event plaintiff would at least be entitled to recover the profit of ₱73,000 which the undisputed evidence (p. 51, Exh. P) shows he would have made under timely performance."

Now, the only act that would render a conveyance to plaintiff impossible would be a prior alienation by defendant to some one else (for we have provided against their simple refusal by directing the Clerk of this Court to convey in that event) and such alienation would violate the decree of this Court, which we must assume defendants intend to obey.

180 A restraining order to prevent such alienation was asked in the complaint, and the application was renewed by motion on March 20, 1912 (record, p. 34) but was rendered unnecessary by a sort of "gentlemen's agreement" among counsel. It would appear also that plaintiff has filed a lis pendens notice (record, p. 49) and anyway, in view of the wide publicity that has been given this case, it would seem next to impossible to find one who would meet the requirements of an innocent purchaser for value without notice and any other would be subject to the decree herein. Thus the language last quoted from the decision relates to an event which not only has not yet occurred, but which almost certainly will not occur, and cannot unless defendants themselves bring it about. Said language, consequently, is little more than obiter dicta, and we were perhaps indulging for such a remote contingency in the formal decree. But in any event defendants are not entitled to a new trial on this ground; the utmost they could obtain—and this only after it is made to appear that conveyance to plaintiff has become impossible—would be a modification of the decree in this particular, provided counsel's contention is correct that the prospective profit could not be proved without disclosing the ultimate purchaser.

But the record fails to support this contention. On the very day of plaintiff's acceptance (Exh. P) a reputable and well known law firm of this city sent him the following letter:

181 "Referring to our letter of January 17, 1912, we beg to state that six days' time will be sufficient for us to examine the title, leases, and other matters in connection with the Hacienda Nagtajan, provided the said papers are immediately placed at our disposal and full opportunity is given for examination. We hereby offer you the sum of ₱380,000.00 cash for the said Hacienda Nagtajan, containing approximately 1,993,000 square meters conditioned only upon the result of our examination of the title, leases and area of the land, showing the same to be in proper and satisfactory form and in accordance with your verbal representations."

Now it will hardly be contended that this firm could not have been compelled to perform its undertaking. The offer was the firm's not someone else's. This is further shown by the testimony (p. 51) of the member who signed for the firm, that if plaintiff

"Had produced the documents of title and demonstrated his

ability to convey, in other words, if he had produced a deed signed by Don Benito Legarda, or by himself as attorney in fact for Benito Legarda, we would have paid the money, taken the documents, and taken possession of the property." (Cf. plaintiff's testimony (pp. 33-34) showing that he dealt with the firm only.)

The same member had previously explained, indeed, that his firm was not to "finance the operation," i. e., supply the price from firm funds,—and that a client "was prepared to purchase the property" but the fact remains that the firm had made the offer, was bound by it and stood ready to proceed. The question was not, therefore, one "as to the readiness, ability and capacity of his undisclosed client," but as to that of the firm. Judge Ross testifies that "we would have paid the money" and no evidence was offered tending
182 to discredit this positive statement of fact, or to indicate that the firm was unable to provide itself with funds. The fact therefore that the client who was to purchase from the firm was undisclosed became wholly immaterial. He might have failed, but the plaintiff could still have held the firm, and its ability, declared by one of its members, to raise the money, has not, we repeat, been questioned.

A reputable firm of lawyers, then, undertook to pay plaintiff "₱380,000.00 cash" for the hacienda, six days from January 19, 1912. He had just undertaken to pay defendants for the same ₱307,000 "on or before the 3rd day of March, 1912." Thus a profit of ₱73,000 was almost in sight. But both undertakings were conditioned, as the law implies, upon plaintiff's obtaining not only a good, but an unincumbered, title, and it was compliance with this condition that defendants prevented (Ev., p. 33). If, now, they should be able to keep plaintiff from getting the land at all, his sole recourse would be under Civil Code Art. 1106, which awards as indemnity not only reimbursement for damages actually incurred, "but also the profit which the creditor may have failed to realize," which in this case is ₱73,000. We do not consider tenable the claim that this could not have been foreseen, for it is certainly no hardship to require a vendor to for-see the market price. Plaintiff's opinion that the price given him was "pretty high" not only related to an earlier period, but weighs little as against an actual offer
183 from a shrewd firm of attorneys, in touch with large business interests and with ample opportunity to keep posted on land values. Defendants had the opportunity to produce other evidence of offers or sales of similar property but not having done so, the offer of Bruce, Lawrence, Ross & Block affords competent, if not conclusive, evidence of market value.

We have now reviewed all of defendants' objections to the decision, but we find nothing in them which would justify even its modification. Their motions for new trial are accordingly overruled.

By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., April 23, 1913.

On April 25, this year, the defendant Benito Valdes took exception against the order of the court denying his petition for new trial.

All the evidence, documentary and oral, offered by both parties during the trial are made a part of this Bill of Exceptions, to be forwarded to the Supreme Court with the other record of case.

In view of foregoing, we pray that this Bill of Exceptions be approved and forwarded to the Supreme Court with all the evi-
184 dence, documentary and oral, offered during the trial.

Manila, June 2, 1913.

ESCALER & SALAS,
(Sgd.) By PERFECTO SALAS RODRIGUEZ,
Attorneys for Defendant Dr. Benito Valdes.

145 Plaza Santa Cruz, Manila.

Copy received, this 2nd day of June, 1913.
(Sgd.) THOS. D. AITKEN,
(Sgd.) HARTFORD BEAUMONT,
Attorneys for Plaintiff.
HAUSSERMANN, COHN & FISHER,
(Sgd.) By CHARLES C. COHN,
Attorneys for Defendant D. Benito Legarda.

Filed this 2nd day of June, 1913, at 11:30 a. m. (Sgd.) J. McMicking, Clerk of Court.

185 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila.

Branch II.

Civil Cause No. 9436.

W. BORCK, Plaintiff,

vs.

BANITO LEGARDA et al., Defendants.

Order.

On May 5, 1913, an alleged bill of exceptions was presented in this case in behalf of the defendant Valdez, but defective in that it failed to contain the Court's order overruling the motion for a new trial. The original decision was incorporated, but in English, and inasmuch as defendant Legarda had already incorporated an English copy in his bill of exceptions, it was suggested to counsel for defendant Valdez that it would be of much greater assistance to the Supreme Court if the latter's bill of exceptions incorporated Spanish copies

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only of the decision and order overruling the motion for a new trial. This suggestion was agreed to by said counsel, but on June 2nd an English copy of the last named order was presented,
186 and up to date no Spanish copies of either are incorporated in the bill. In accordance, therefore, with the arrangement agreed to by said counsel, we now formally direct, as we think we have discretion to do under Act No. 2239, sec. 1, that Spanish copies of the decision and order overruling motion for a new trial be incorporated in the bill of exceptions of said defendant Valdez, and upon being so incorporated, the bill will stand approved.

By the Court:

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., July 23, 1913.

PHILIPPINE ISLANDS,
Manila, ss:

The undersigned hereby certifies that the foregoing Bill of Exceptions, composed of 61 pages, is the original Bill of Exceptions presented by the appellant and approved by this Court.

In faith whereof I sign these presents, in Manila, this 12th day of August, 1913.

(Sgd.) J. McMICKING, *Clerk.*

187 UNITED STATES OF AMERICA:

The Government of the Philippine Islands.

In the Court of First Instance of the District of Manila.

Manila, P. I., July 24, 1913.

No. 9436.

W. BORCK

vs.

BENITO LEGARDA et al.

Notice of Decision.

Messrs. Beaumont, Aitken, Escaler and Haussermann.

GENTLEMEN: You are hereby notified by these presents that on the 23rd day of July, 1913, the decision in the above-entitled case was rendered that Spanish copies of the decision and order overruling motion for a new trial be incorporated in the bill of exceptions of the defendant Valdez, and upon being so incorporated, the bill will stand approved.

(Sgd.) JOSÉ CASIMIRO,
Deputy Clerk.

188 Received copy of the foregoing notice this 24th day of July, 1913.

ESCALER & SALAS,
(Sgd.) By J. GONZALEZ.

Received copy of the foregoing notice this 25th day of July, 1913.
(Sgd.) HARTFORD BEAUMONT,
Attorney for Plaintiff.

Received copy of the foregoing notice this 25th day of July, 1913.
(Sgd.) THOS. D. AITKEN.

Received copy of the foregoing notice this 25th day of July, 1913.
HAUSSERMANN, COHN & FISHER.

189 Supreme Court of the Philippines.

Clerk's Office.

Filed June 4, 1913, 12:00 a. m.

Be it known that in this 2nd day of September, 1913, and by registered mail, three (3) copies of this printed Bill of Exceptions have been sent to each one of the parties of this case.

V. ALBERT, *Clerk,*
(Sgd.) By P. R. ANGELL,
Deputy Clerk.

190 PLAINTIFF'S EXHIBIT "A."

Manila, December 17, 1910.

Mr. W. Borck, Manila.

DEAR SIR: Granting your request for the purchase of a parcel of land of about Two Hundred Thousand Square Meters (200,000) of the Nagtahan Estate, the property of Don Benito Le garda, situated between parcels A and B of the aforesaid estate beginning from the boundary line of the Santa Mesa Estate following the direction of the Cemetery of Sampaloc at Balic-Balic Street for a distance of sixty-five (65) meters, interior, and from such Balic-Balic street sixty-five (65) meters, interior, in a N. W. direction the above mentioned Cemetery of Balic-Balic, at a point behind the same, containing an area of two hundred thousand square meters more or less, which is more correctly described in the technical map thereof and by virtue of the powers conferred to me by the owner Sr. Legarda, I grant you the opportunity to realize such purchase within the period of three months beginning from the date hereof; it being understood that if within this time and offer to purchase the whole estate should arise then this option would be cancelled, and the tender of

sale by me of said parcel of land is made on the guaranty that the same is free from all incumbrances and with the just title at
191 the price of Thirty Centavos (0.30) Philippine currency per Square Meter.

Should any improvements exist upon the said parcel of land, the indemnity for removing same shall be at the expense of the vendee.

Very respectfully,

(Sgd.) DR. BENITO VALDES.

192 PLAINTIFF'S EXHIBIT "B."

W. Borck,

Real Estate Agent.

39 Plaza Cervantes.

Manila, P. I., August 2, 1911.

Dr. Benito Valdez, Calle Mendoza, City.

DEAR SIR: In reference to our conversation regarding the Nagtajan hacienda consisting of about 1,900,000 sq. m. of land including the land required for proposed streets I offer you for the whole property two hundred thousand (200,000.00) pesos Ph. C., minus commission, payable in four sums of fifty thousand (50,000.00) pesos each.

Fifty thousand (50,000.00) pesos with execution of deed of sale and fifty thousand every year following for three years at six (6%) per cent interest per year.

Please favor me with the information if you will consider and cable this offer to Mr. Legarda.

Respectfully yours,

(Sgd.) W. BORCK.

193 PLAINTIFF'S EXHIBIT "C."

W. Borck,

Real Estate Agent.

39 Plaza Cervantes.

Manila, P. I., December 2, 1911.

Dr. Benito Valdez, San Sebastian.

DEAR SIR: In reference to my former negotiations regarding a purchase of the Nagtahan hacienda, I wish to advise you that I have another party interested in it and think soon to be able to make a better offer on it than before.

However to reach a good result it would be essential that you leave the sale of the property on my hand for at least one month. If one agent only has the right to sell it a much better price could be

reached as when several have it on hand as naturally one would try to underbid the other.

Hoping that you will grant me this request, I am, Sir,

Most faithfully yours,

(Sgd.) W. BORCK.

194 PLAINTIFF'S EXHIBIT "D."

(Being an envelope as follows:)

W. Borck, Real Estate Agent, 39 Plaza Cervantes, Manila, P. I.:

I have received a letter from M. Legarda, and I beg you to call me at your convenience.

DR. BENITO VALDEZ. (Rubric.)

San Sebastian.

195 PLAINTIFF'S EXHIBIT "E."

Manila, December 4, 1911.

Mr. W. Borck, Real Estate Agent, Manila, P. I.

SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed government valuation.

(Sgd.) B. VALDÉS.

196 PLAINTIFF'S EXHIBIT "F."

W. Borck,

Real Estate Agent.

39 Plaza Cervantes.

Manila, P. I., January 17, 1912.

Dr. Benito Valdez, 195 San Sebastian, City.

DEAR SIR: In reference to our negotiations regarding the hacienda Nagtahan at Manila, property of Mr. Benito Legarda, consisting of about 1993000 sq. meters of land, I offer to purchase said property for the sum of three hundred & seven thousand (307-000.00) pesos, Ph. C., cash, net to you, payable the first day of May 1912 or before and with delivery of a torrens title free of all encumbrances as taxes and other debts.

Respectfully yours,

—— ——.

197 PLAINTIFF'S EXHIBIT "G."

W. Borck,

Real Estate Agent.

39 Plaza Cervantes.

Manila, P. I., January 19, 1912.

Dr. Benito Valdez, 195 San Sebastian, City.

SIR: I hereby advise you that I am ready to purchase the hacienda Nagtahan situated in the districts of Sampaloc and Nagtahan, Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March 1912 provided all documents in connection with the hacienda Nagtahan, as torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.

Very truly yours,

(Sgd.) W. BORCK.

198 PLAINTIFF'S EXHIBIT "J."

January 23, 1912.

Dr. Benito Valdez, 195 Calle San Sebastian, City.

SIR: I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) pesos, Ph. C., ten days after the torrens title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and those documents and papers have been found in good order.

Respectfully yours,

——— ——.

199 PLAINTIFF'S EXHIBIT "K."

Manila, P. I., February 28, 1912.

Dr. Benito Valdez, Attorney-in-fact for Benito Legarda, Manila.

DEAR SIR: To prevent any misunderstanding, I wish to advise you that the purchase price for the Hacienda Nagtahan is ready to be paid over to you, and I request you to notify me whenever it is

convenient for you to place at my disposal for inspection the title-deed and papers in connection with said estate.

Very respectfully,

(Sgd.) W. BORCK.

B-m.

200 PLAINTIFF'S EXHIBIT "L."

Cable Address: "Beaumont."

Telephone: 188.

Hartford Beaumont,

Attorney-at-Law.

Manila.

March 5, 1912.

Dr. Benito Valdez, Manila, P. I.

SIR: Mr. Borck has come to me in regard to the purchase of the Hacienda Nagtahan belonging to Sr. Benito Legarda. He tells me that you gave him an option some time ago for the purchase of the whole estate, some 1,993,000 square meters, for the assessed government valuation; that shortly afterward he accepted the offer and agreed to purchase for a price made slightly more than the valuation in order to cover cost of certain cables; that thereupon he in his turn sold the estate and now is threatened with a law suit by his vendees on account of his failure to turn over the title papers. He claims that he cannot get these papers from you. I feel certain that there must be some mistake or misunderstanding about this and beg that you will appoint an hour some time today when I may call and get these papers for inspection. I will be of course be personally responsible for the safe keeping of all documents,
201 and can assure you that should they be in proper order, as of course I know they must be, the money in full payment will be promptly forthcoming.

Your- very truly,

(Sgd.) HARTFORD BEAUMONT.

B-V.

202 PLAINTIFF'S EXHIBIT "M."

Cable Address: "Beaumont."

Telephone: 188.

Hartford Beaumont, Attorney-at-Law, Manila.

March 5, 1912.

DEAR DR. VALDEZ: Mr. Escaler of Kincaid's office has just left me after telling me that it is your intention to repudiate your agree-

ment for the sale of the Nagtahan estate. I told him that in that event we would certainly file suit tomorrow morning for such a dishonorable act could be met in no other way. On calmer reflection it seems to me that I should not take action so certain to injure your good name for fair dealing without knowing directly from you that Mr. Escaler has correctly reported your words. Will you not kindly inform me by bearer and in writing just what you intend to do about the matter, and oblige.

Yours very truly,

(Sgd.) HARTFORD BEAUMONT.

203 Cablegrams requiring action must have immediate attention.

Cablegram.

Received.

The Government of the Philippine Islands.

Executive Bureau.

Washington, March 5, 1912.

Forbes, Baguio.

Doctor Valdez:

Cable status options. I have not given you instructions to give options.

BENITO LEGARDA.

EDWARDS.

[Seal of the Executive Bureau.]

Copy Furnished.
DR. BENITO VALDEZ, *Manila.*

Baguio, March 6, 1912.

Her

204 January 20, 1912.

Borck	Borck.
Ofrece	Ofrece.
Ruhezeit	300,000
Rubace	7,000
Obwohl	Una oferta muy pobre.
Opcion	Opción.
Magdaleon	Día 4 de Marzo.
Adinventos	Qué arreglo se ha hecho?
Lowenstain	Lowenstain.
Palmearon	Otros informes por correo.

VALDES.

January 22, 1912.

Legarda, Washington:

Recrescer..... Sírvanse contestar a este y a nuestro anterior telegrama inmediatamente.

Jaceatis..... Día 19 Enero.

PRIETO.

205 Legarda, Washington:

Offer option subject your approval Bork claimed actual option made insist purchasing hacienda conteste tipo precio expropiacion baguio.

VALDES.

206 Legarda, Washington:

Borck ofrece ruhezeit rubace obwohl opcion Magdaleon adinventos Lowenstain Palmearon.

VALDES.

(January 20, 1912.)

207 (No. 661)—Typing Received Form.

Replies should be ordered via Eastern.

The Eastern Extension Australasia & China Telegraph Company, Limited.

Manila Station.

Doubtful Words should be Officially repeated. See Rule Book.
No enquiry respecting this Telegram can be attended to without the production of this Copy.
The following Telegram Received via Eastern, at 6/51 A. M., Mar. 4, 1912:

82. Washington, District Columbia, 7, 3, 12/25 P. M. C. C. S. B. V. Aust. Pac.

Legarda, Manila:

Borck option impossible Cadrenus.

LEGARDA.

Sírvase V. repetir la última palabra "Cadrenus."

Per B. LEGARDA,
CARSBUSTI.

208 F. Font.
Mar. 4, 1912.
6/51 A. M.

82. Washington, District Columbia, 7, 3, 12/25 P. M. C. C. S. B. V. Aust. Pac.

Legarda, Manila:

Borck option impossible Cadrenus.

LEGARDA.

209 *Cablegram.*

(Heading Omitted.)

No. —. Time —. Check —. Via —.

—— —, 190—.

Send the following cablegram "Via Commercial Pacific" subject to the terms and conditions printed on the back hereof which are agreed to.

To —— ——:

Borck suit asking sale and eighty thousand damages lawyer thinks bluff. Bruce agreed price option consideration unpaid because bank refused credit better not extend option time neither sell property pending litigation send cable via Eastern avoid delay.

MAURICIO.

210 *Cablegram.*

(Heading Omitted.)

— The following cablegram "Via Commercial Pacific" subject to the terms and conditions printed on the back hereof which are retified and agreed to.

Received 4.04 A. M. D. Z. Mar. 19, 1912.
22. Washington, 8.

Prieto, Manila:

Don't sell or extend time.

LEGARDA.

211 EXHIBIT 9.

B. Legarda,

80 Wall Street.

Telephone: 4288 John.

Cable Address: Legarda. Code used: A B C Code, 5th Edition.

"La Flor de Legarda."

"Germinal."

Branch: Manila, Philippine Islands.

New York, January 18, 1912.

Dr. Benito Valdes, Manila, P. I.

MY DEAR NAMESAKE: I now confirm the contents of my letter of January 11 in which I forwarded to you copies of the correspondence had by me regarding the right of option in favor of Attorneys Bruce, Lawrence, Ross and Block for the purchase of the Nagtahan Hacienda, and I also send you herewith copy of the letter that I — just written to Mr. Lowenstein who has ask- me ten days' extension of time in order to get information from you regarding the number of houses that I and our family have within the said Nagtahan Hacienda because these improvements are excluded from the purchase and also he desires to ascertain the number of contracts that I executed in favor of land holders therein with the privilege or option of buying the land occupied by their houses of strong materials. I suppose at this time they shall be asking for information regarding these things and I am sure they will be convinced that very little only has been excluded from the contract.

I have just known that Rita is mother to a baby girl and for this I congratulate you and Rita because I believe that you and
212 she prepare to have baby girls and not baby boys. My kisses to Rita and your children, you know that you are loved by your namesake.

(Sgd.) BENITO.

213 EXHIBIT 7.

Bld. Montmartre.

Entrée: 48 Rue Vivienne.

Hotel des Grands Boulevards.

Entierement Restauré en Février 1911.

Chauffage Central—Electricité.

Telephone: 272-20.

Adresse Télégr.: Boulevarotel-Paris.

Ascenseur.

Paris, May 19, 1911.

MR. NAMESAKE: At last Dr. Regnier has delivered to me 20 units of serum, 10 of 1 c. c. each and 10 of 2 c. c. each, making together 30 c. c. for which he has charged 300 frs. only, as per attached bill that I sent you herewith in case it should be necessary to prove value of the medicine for the purposes of payment of Customs duties. I shall send this package via the Transverian so that it may reach you quickly, by registered mail to avoid being lost or opened upon arrival there, and may be I will also insur*ed* it. The Doctor told me that you may write to him directly and that he would send you all the serum that you should need. He also gave me the enclosed pamphlet written by him upon the Treatment of the Si*ph*il*ys* by serum. The formula known as 606 is now in vogue but aside of the little estability of the product and its difficult application—as you must bear in mind and take into consideration the capacity
214 for endurance of the persons treated in which there have been many cases of (illegible)—there is yet the danger of a very strong poison, which is not present in the serum.

These thirty grams that I am sending you is my Shristmas present and also the scale that I sent you from New York.

When I get to America I shall write to you of what I think of your management of the Nagtahan Estate as well as about other things that I had round there which you had managed gratuitously though I think you ought to be recompensed therefor the same as I do to Bitan for taking care of my other thing, in as much as I intend little by little to do away with all the wor-dly cares in order to establish myself here definitely so as to lengthen in every possible way the few years left to me.

Of course when I leave my *efficient* possition, and I do not know until when it will last, instead of increasing my income I shall have to spend it, at least part of it, but nevertheless I think to this high time that I should rest. Well, I shall write you from America.

Bie-Bie, my kisses to Chata and your children, and you know that you are loved by your namesake.

(Sgd.) BENITO.

P. S.—I did not say that I would resign my office as I am not intending just now to lead the life of a lazy fellow but I
215 foresee that it will not be long before something or other might happen and force me to it and it is better to be ready for that time.

20th day.—To-morrow I shall start for America on the G. Washington, a magnificent tra-s-lantic Linner of the Nord Deutcher Lloyd Aleman, of 27,000 tons, and will arrive in New York in 7 days, that is, on the 28th of this month, and from there I shall cable you. I am well.

—— ——.

216 *Copy of Letter Forwarded to Mr. M. F. Lowenstein, Jan. 18, 1912.*

Mr. M. F. Lowenstein, 2308 Exchange Place, Room 43, New York City.

MY DEAR MR. LOWENSTEIN:—

Confirming my telephone conversation with you today, I hereby agree to give to Messrs. Bruce, Lawrence, Ross & Block, an extension of ten days on the time set in my letter of January 2nd, 1912, to Mr. Edward B. Bruce, for the taking up of the option of sale of my Hacienda de Nagtahan as per the terms in my letter to Mr. Bruce of December 29th, 1911, and as modified in my letter to the said Mr. Bruce of January 2nd, 1912. The time, therefore, to which I agree for the taking up of the option will be 50 (fifty) days beginning from the first of January, 1912.

Very sincerely,

—— ——.

217 EXHIBIT "N."

Assessed Government Valuation of the Land Known as Hacienda of Nagtahan.

			Block
A.	Sta. Mesa—G. Tuason	₱95,429.00	1
L.	do. do.	33,530.00	7
B.	Sampaloc	54,200.00	9
K.	Sta. Mesa	5,390.00	2
	do.	15,471.00	2
J.	Sampaloc	29,596.00	10
	Sta. Mesa	10,313.00	1
	San Miguel	60,345.00	36
		304,274.00	
	Rizal	2,680.00	
		₱306,954.00	

218 House of Representatives U. S.

Washington, D. C.

June 19, 1911.

MY DEAR NAMESAKE: I have just received your letter and I am very glad to know that all of you are well, but I regret to tell you that it is possible that you may not see me around there this year, as I have in hands the project of establishing an Agricultural and Mortgage Bank that I am promoting here and in Paris with the intent that it be established in that country in order to help the agricultural development of that country, a long time felt.

Regarding the Nagtahan Estate, I am now considering the way to alienate it, for I believe it will be more beneficial to invest the price of the land in other more productive business.

If you can find there a prospective purchaser you must inform me immediately the price agreed upon and you should not enter into any definite contract of sale without my approval, because it is possible that in this very place I may be able to sell it. It is understood, of course, that the purchase price should all be paid in cash and exceptions should be made in the *sell* of those parcels of
219 land on which I and the other members of my family had buildings constructed or improvements made, and also a saving should be made in favor of the land holders of said estate with whom I have executed contract, as otherwise they would be damaged.

With nothing else to tell you; my kisses to Rita and to your children, receive the love and embraces of

Yours sincerely,

(Sgd.) B. LEGARDA.

Dr. Benito Valdes, Manila.

P. S.—I am leaving this City very soon and if you wish anything in Europe write to me addressing the letters there at the care of Don Pedro Roxas.

Yours,

NAMESAKE.

220 Paris, November 13, 1911.

MY DEAR MÁURO: I have just receive- your letter of October 17 together with the accounts of the distillery and my private bank account. Also the documents of the Sergeant-at-Arms that you are returning to me for being unable to deposit the amount in the bank because the check is personal and I only can cash it.

My dear friend Don Pedro Roxas has earnestly urged me to join the association of property owners established in that city and I consented to his wish so that I request you to sign me as a member of the said association of property owners.

Supplementing my last letter regarding what you informed me of a certain proposition of Borck to purchase the Nagtahan Estate, you may tell him that I do not have much desire now to sell it to him unless the price offered be more than 400,000 pesos cash, and as I have already told you, there must be excluded from the sale all the parcels of land on which I and the members of my near family have constructed buildings or improvements or have set aside portions of land for building purposes. *Do not* mention should be also made in the contract of sale of the existing contract with the tenants, as you know that many of them have been given the right to buy the land they occupy.

I have also told you that before entering into any contract of sale you must first let me know the price, so that I may be sure
221 that I can not find in this city a purchaser with a better price.

I wish to repeat what I have always told you, that the books and other papers of the Estate, as well as the contracts with the tenants, must — be shown to anybody, until after the sale, for it often happens that purchasers desist from buying upon learning the incomes and encumbrances of the Estate.

I am going to start for the United States towards the end of this month because the sessions of Congress will commence at the beginning of December, furthermore I wish to get to New York to see how my tobacco business and my agency of the Germinal in that city are faring. Consequently, all the letters that you may wish to send me from now on must be addressed to the House of Representatives, and with no other news you know that you are loved by your affectionate.

(Sgd.) B. LEGARDA.

222 EXHIBIT "O."

Bruce, Lawrence, Ross & Block.

Cable Address: Sevans.

Western Union Code.

Manila, January 17, 1912.

W. Borck, Esq., Manila.

DEAR SIR: Referring to our recent conversations regarding the proposed purchase by clients of ours of the property known as the Hacienda Nagtajan, I beg to advise you that our clients, after investigation of the physical conditions of the property, are prepared to make an offer for the purchase of the same at the price named by you, to-wit, ₱380,000.00 cash, provided that there is a good title to the property, that it contains substantially the area represented, namely, 1,993,00- square meters, and that the existing leases upon certain portions of the said property are found to be in proper form. It is the desire of our clients to have an opportunity to investigate the legality of the title and leases at the earliest practicable

moment, and they have authorized us to say that if the conditions are satisfactory with regard to these matters, they are pre-
223 pared to make you a firm offer of the amount above named, and to make a deposit of a reasonable amount as an evidence of good faith.

Very truly yours,
BRUCE, LAWRENCE, ROSS & BLOCK,
(Sgd.) By JAMES ROSS.

R.-N.

224 EXHIBIT "P."

Bruce, Lawrence, Ross & Block.

Cable Address: Sevans.

Western Union Code.

Manila, January 19, 1912.

Mr. W. Borck, Holder of Option on Hacienda Nagtajan of Don Benito Legarda, Manila.

DEAR SIR: Referring to our letter of January 17, 1912, we beg to state that six days' time will be sufficient for us to examine the title, leases, and other matters in connection with the Hacienda Nagtajan, provided the said papers are immediately placed at our disposal and full opportunity is given for examination. We hereby offer you the sum of ₱380,000.00 cash for the said Hacienda Nagtajan, containing approximately 1,993,000 square meters, conditioned only upon the result of our examination of the title, leases, and area of the land, showing the same to be in proper and satisfactory form and in accordance with your verbal representations.

Very truly yours,
BRUCE, LAWRENCE, ROSS & BLOCK,
(Sgd.) By JAMES ROSS.

R-N.

225 EXHIBIT "Q."

Bruce, Lawrence, Ross & Block.

Cable Address: Sevans.

Western Union Code.

Manila, March 11, 1912.

Mr. Hartford Beaumont, Manila.

DEAR SIR: We have your letter of March 8th advising us that Mr. Borck is unable to make conveyance of the Hacienda de Nagtajan because of the refusal of Dr. Valdez, representing the owner,

to honor Mr. Borck's option. We have no desire to purchase a lawsuit, and our offer to purchase the hacienda, being, as you say, based upon the expectation of a prompt conveyance, may be considered withdrawn.

Very truly yours,

BRUCE, LAWRENCE, ROSS & BLOCK,

(Sgd.) By W. H. LAWRENCE.

226 EXHIBIT "R."

January 20, 1912.

Judge J. Ross, of Messrs. Bruce, Lawrence, Ross & Block, Attorney at Law, Plaza Moraga, City.

SIR: I hereby accept your offer of purchase of the hacienda Nagtahan, situated at the districts of Nagtahan and Sampaloc and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and eighty thousand (380,000.00) pesos, Ph. C., net to me. As soon as possible I will place at your disposal the title deed and all papers in connection with the hacienda Nagtahan. Full payment to be made six days after the documents and papers have been placed at your disposal.

Very truly yours,

——— ———.

227 EXHIBIT "S."

(Copy Substituted by Consent.)

March 8, 1912.

Messrs. Bruce, Lawrence, Ross and Block, Manila, P. I.

GENTLEMEN: I have to inform you that Dr. Valdes refuses to convey the Hacienda de Nagtahan to Mr. Borck and Mr. Borck is therefore unable at this time to carry out his agreement with you in respect to the matter.

I wrote a letter to Dr. Valdes, a copy of which was shown your Mr. Lawrence but have received merely a telephonic reply that Dr. Valdes did not care to commit himself on paper.

Your offer contemplated an immediate transfer, this being now impossible you are free to withdraw should you so desire. I beg to inquire what course you will pursue.

Should you desire to continue with the matter, as Judge Ross told the writer verbally that you would, kindly so advise. Mr. Borck is willing to convey at the price already agreed upon whenever he can acquire the title to the land but does desire, in view of the certain/y of litigation, to secure a small percentage of the agreed price as an advance payment. I trust this can be arranged.

Yours very truly,

(Sgd.) HARTFORD BEAUMONT.

228 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance for the Judicial District of Manila, Branch II.

Civil Cause No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA et al., Defendants.

Proceedings.

This cause came on for hearing in Branch II of this Court, the Hon. Charles S. Lobingier, presiding, upon the 10th day of April, 1912, at 8 A. M.

Appearances:

For the Plaintiff: Messrs. Hartford Beaumont and Thomas D. Aitken.

For Defendant Valdez: Messrs. Singson, Ledesma & Lim, and Mr. Jose Escaler.

For Defendant Lagarda: Mr. Ariston Estrada.

229 All counsel being present in court, by agreement testimony of defendant Valdez, called as a witness for the plaintiff, was taken as follows:

BENITO VALDEZ, called as a witness for plaintiff, testified as follows:

Direct examination.

By Mr. Aitken:

Q. Please state your name, age, address and occupation.

A. Benito Valdez; 52 years of age; physician and surgeon; and my office is in calle Mendoza, old number 73, I don't remember the present number.

Q. Are you the same Benito Valdez who together with Mauro Prieto and Don Benito Legarda y de la Paz, hold powers of attorney from Don Benito Legarda y Tuazon?

A. Yes, sir.

Q. D. Benito Legarda y Tuazon is the owner of a piece of property in the city of Manila known as the hacienda de Nagtahan, is he not?

A. Yes, sir.

Q. And, as attorney-in-fact of Benito Legarda y Tuazon, state whether or not you have been administrator of this hacienda?

A. I am attorney-in-fact, but I am not administrator of the hacienda.

Q. State whether or not you have supervision, however, of the orders or acts of the person who does administer this hacienda?

230 A. I don't understand the question very well. Do I understand from the question that I am under the control or supervision of the administrator?

Q. No; it is the contrary. (Question repeated to the witness.)

A. Yes, sir; partly. That is, the part concerning documents; but concerning the money, no.

Q. Do you know Mr. W. Borck?

A. Yes, sir.

Q. State whether or not you have had certain transactions with him respecting this hacienda?

A. Nothing more than Mr. Brock came to me many times trying to purchase this hacienda.

Q. And state whether or not as a result of these negotiations with Mr. Borck you had occasion to communicate by both cable and letter to D. Benito Legarda y Tuazon?

A. I believe that the question embraces two parts; one in regard to negotiations and the other in regard to communications. With regard to the negotiations, I will state that I have had no negotiations with Mr. Borck; and in regard to the communication, I will say that I have communicated by letter with Mr. Legarda.

Q. Is that the only way you have communicated with Mr. Legarda,—by letter, with reference to these negotiations?

A. At first; yes, sir.

231 Q. Did you ever communicate with him by cablegram?

A. Lately; yes, sir.

Q. Have you with you a copy of the letters sent by you to D. Benito Legarda with reference to these negotiations?

A. I do not keep any copies, because they are private letters, and that is not my custom.

Q. Did you ever receive any answers from Mr. Legarda to your letters?

A. I have received some answers, but not to all the letters I have written to him; and particularly to a letter that was lost.

Q. Have you received any answers from Mr. Legarda referring to your communications with Mr. Borck?

A. I believe that in a letter I have received, which on account of my negligence in mislaying my papers, which sometimes the children get and play with, I believe that he mentioned something about the propositions of Mr. Borck.

Q. Have you made search for this letter?

A. I have been searching for it, and I am still searching for it.

Q. Have you the slightest idea where it is?

A. I am really living in two places, one at my office in calle Mendoza, and in my own residence in San Sebastian; and it is my custom to keep letters in my desk, and of course I need some time to

look for particular letters like this, as I also keep others in my residence.

232 Q. Are you able or unable to produce that letter this morning?

A. I have brought a letter with me from Mr. Legarda, but it is not the *principal* letter that I am referring to, and I am looking for.

Q. The one I am asking you about is the one you say you are looking for.

A. I have been looking for it, and haven't found it.

Q. Then, you are unable to produce that this morning?

A. Not having found it, consequently I cannot produce it.

Q. Do you remember what it says?

A. I remember more or less as a result of a conversation which I had with Mr. Bork afterwards. It seems that in the letter that Mr. Legarda did not agree with the price offered by Mr. Borck, and he wanted a larger amount.

Q. Did you discuss this letter with Mr. Borck?

Mr. Escaler: Objection as immaterial and vague.

The Court: Overruled; he may answer.

A. I have had so many discussions with Mr. Borck that I don't remember whether I have referred to that same letter particularly or to some other one.

Q. Did you ever receive any letters from Mr. Legarda with reference to Mr. Borck and his purchase, or attempted purchase, of that hacienda?

A. Yes, sir: I received a letter.

Q. How many?

233 A. The letter I am referring to is a private letter in which he incidentally mentioned this matter of Mr. Borck.

Q. I am asking you how many letters, whether private or not, that you have received from Mr. Legarda, in which he mentions Mr. Borck?

A. I have about two or three.

Q. Have you any of them with you?

A. One of them, I have; yes, sir.

Q. The one that you now have with you is which letter, the one last received or the second one?

A. It is one of the first letters.

Q. You didn't receive more than three, did you?

A. I don't remember, but I am looking through the correspondence to find out whether there is *nay* more.

Q. And, have you only discovered one?

Mr. Esclaer: Objection, as being vague.

Q. And, have you only discovered one letter from Mr. Legarda referring to the purchase or attempted purchase of this hacienda of Nagtahan by Mr. Borck?

A. Yes, sir; up to this time, one.

Q. The one that you have found; did you discuss that one with Mr. Borck?

A. I mentioned it to Mr. Borck.
Q. Did you show it to him?
A. No, sir.
Q. Did you show him any of the letters that you received
234 from Mr. Legarda with reference to Mr. Borck's purchase?
A. I don't think that Mr. Borck would say yes. I never showed him anything.
Q. As a result of the receipt of any of these letters mentioned from Mr. Legarda, did you request Mr. Borck to call upon you to discuss the proposition?

Mr. Escaler: Objection, as immaterial.
The Court: He may answer.
Mr. Esclaer: Exception.

A. Never.
Q. I will show you this document marked Exhibit D for identification, and I will ask you to state whether or not the note written on it in ink was written by you and sent to Mr. Borck?
A. I don't reme-ber of ever writing this note on this envelope.
Q. Do you recognize your own handwriting?
A. It has a similarity.
Q. Do you deny that you sent that?
A. This envelope is Mr. Borck's, and how could I send an envelope of Mr. Borck's to himself?
Q. Will you please answer the last question? Will you deny that you sent that note to Mr. Borck?
A. Under my oath, I don't remember very well. I don't know when and how I could have sent that.
Q. Do you admit that it is possible that you could have
235 sent that?

Mr. Escaler: Objection as argumentative and impeaching their own witness.
The Court: He may answer.

Mr. Escaler:

A. I doubt it, because I cannot read and do not possess a knowledge of English sufficient to write in that manner; and that letter seems to be written in English.
Q. Examine that closely and state whether or not, then, you believe it to be a forgery or an imitation of your own handwriting.

Mr. Escaler: Objection as calling for an opinion of the witness, and the witness is incompetent.
The Court: He may answer.
Mr. Escaler: Exception.

A. I have stated already that it has a certain similarity to my handwriting.
Q. You might answer the question. You probably have an opinion on it.

Mr. Escaler: Objection as calling for an opinion.

The Court: Overruled.
Mr. Escaler: Exception.

Q. State, is it or is it not your handwriting?
A. I cannot state positively whether it is or it is not; I have stated that it bears some similarity.

Q. Have you brought with you, Dr. Valdez, a letter dated
236 the 2nd of August, 1911, directed to you and signed by Mr. Borck, which letter refers to a conversation had between you and contains a certain offer for the property?

Mr. Escaler: I object to the question as wholly immaterial?
The Court: He may answer.
Mr. Escaler: Exception.

A. No, sir.
Q. Have you looked for such a letter?
A. I can look for it.
Q. That was the letter mentioned in the subpœna duces tecum handed you, was it not?
A. What letter?
Q. Kindly repeat the previous question to the witness, describing the letter. (Question read to witness.)
A. I didn't see that letter. I don't know where it might be; I will look for it.
Q. How long will it take you to find that letter, Dr. Valdez?
A. I could find it tomorrow; or if not tomorrow, within a few days.
Q. Do you remember having sent a letter of Mr. Borck's, addressed to you, on to Mr. Legarda in Washington?
A. The only thing I have sent to Mr. Legarda in Washington were the offers of Mr. Borck.
Q. Do you mean by that that you merely related to him the offers, or did you send the letters themselves?

237 A. I am going to explain. As I am not a merchant, and of course not versed in these matters very well; and sometimes I read these letters and after I have noted its contents, transmit the substance of it to Mr. Legarda in a letter, and sometimes I send the letters themselves.
Q. What was the date of the first offer you got from Mr. Borck?
A. I can't state the exact date, but it is some time ago.
Q. If I showed you a copy of his first offer, would you be able to recognize it?
A. I will see.
Q. I show you this letter dated, August 2, 1911, directed to you, signed by W. Borck, marked for identification Exhibit B, and ask you whether or not that is the first written offer that you ever received from Mr. Borck for this hacienda?
A. (Witness asks interpreter to translate letter to him in Spanish.) I don't remember the letter very well, but the substance of the letter, I remember having talked to Mr. Borck several times about it; and we have always had the same difficulty, that no one wanted to pay

for the cablegram, because I believe that the cablegram is mentioned in this letter.

Q. As a matter of fact you talk and read English, don't you?

A. No, sir.

238 Q. Not any, at all?

A. I can say good morning whenever someone arrived, and such words as that. There is a gentleman over there who knows that I do not possess English (referring to Mr. J. W. Ferrier, who is present in the court room. Witness then explained that he mistook Mr. Ferrier for Dr. Banks of the Bureau of Science).

Q. Have you the original of the letter that I have just shown to you (referring to Exhibit B) in your possession?

A. No, sir.

Q. Where is it, if you know?

A. Is it not the same letter you asked me about before—that I had to look for it—in which I answered that I am going to look for it?

Q. That is the letter.

A. I give the same answer, that I am going to look for it.

Q. Do you know whether or not you sent the original of that letter (Exhibit B) on to Washington?

A. I can't answer that question; so long time has passed. I am going to look for the letter, and if I find it I must not have sent it.

Q. Do you know whether or not you sent the substance of that letter to Washington?

A. I communicated various offers of Mr. Borck to Mr. Legarda; and that is why I don't know whether it was this offer or that of so many others that Mr. Borck has been bothering me with many times.

239 Q. Do you know whether or not you received any letter from Mr. Legarda referring to the offer that is contained in this Exhibit B?

A. I cannot say whether it referred to that particular letter, but I have received letters from Mr. Legarda which refers to Mr. Borck.

Q. Will you examine the letter which you state you have with you, and state whether or not that refers to this offer contained in Exhibit B?

A. Here it is (witness reads from letter). It seems that I have sent the letter of Mr. Borck.

Q. What is the date of that letter?

A. October 30, 1911.

Q. That is one of the letters called for, is it not, in the subpœna duces tecum?

Mr. Escaler: I object; the subpœna is the best evidence.

Q. Will you let us see that letter?

A. (Witness produces letter.)

Direct examination continued.

By Mr. Beaumont:

Q. About what date was this letter of October 30 received by you in Manila?

A. About the end of November, perhaps.

Q. And, did you take any steps toward informing Mr. Borck of the general nature of the reply?

A. Of all the communications of Mr. Legarda I have informed Mr. Borck.

240 Q. Do you remember whether you sent Mr. Borck any chit or note to call at your office, or whether you went to his office?

A. No, sir; Mr. Borck came to my office.

Q. And was there any talk had in regard to an option at the valuation fixed in this letter of Dr. Legarda's?

A. We talked to Mr. Borck about an option and I have always stated to him that my option would always have to be conditional, because I would have to submit it to Mr. Legarda first, and get Mr. Legarda's approval.

Q. Will you look at this paper, which I will mark for identification, Exhibit E, and state whether or not that is your signature?

A. Yes, sir; this is my signature.

Q. How many conversations did you have with Mr. Borck immediately prior to signing that document?

A. I don't remember any more, because Mr. Borck has been after me day and night. He himself is laughing, because he is well aware of it.

Q. You didn't see as much of him after the signing of this option, I presume.

Mr. Escaler: I object to the question as taking for granted testimony that has not been given.

Q. After signing this document?

A. Why not? Just the same.

Q. I will show you also this document marked Exhibit A, and ask you if that is also your signature, Dr. Valdez?

241 Mr. Escaler: Objection to this document as referring to another property.

The Court: Overruled.

Mr. Escaler: Exception.

A. Yes, sir.

Q. Do you remember receiving a letter from Mr. Borck addressed to yourself, at Manila, under date of December 2, in which he suggests making a better offer than the preceding one, for this hacienda of Nagtahan?

A. What offer was he making in that letter you refer to?

Q. Do you remember receiving from Mr. Borck any letter in regard to the purchase of this hacienda at about the same time that you received this letter from Mr. Legarda of October 30? That is to say, at the end of November or the 1st of December?

A. I remember that Mr. Borck came to my office one afternoon and we talked about this matter, he stating that he found a better purchaser, and a better offer.

Q. Did you receive such a letter?

A. I don't remember very well; it might have been that I received a letter. When we talked about this new purchaser he stated to me that he had a better offer, and that I could communicate it to Mr. Legarda.

Q. If such a letter as that was received by you, where is it now? Is it in your possession or have you disposed of it in any
242 way?

A. I am going to look for it in my office; as we had all our conferences in that office, and it may be that I have the letter there.

Mr. Beaumont: We call upon the defense to produce the letter of December 2 signed by Mr. Borck.

Mr. Aitken: The letter produced by the witness as that in his possession and received from the defendant Legarda, is a letter dated at Paris, October 30, 1911, and contains, among others, the following paragraphs:

"Propositions of purchase.

I received the letter of Mr. Borck and you may answer him that it is useless to make propositions for a price less than the assessed value. That I only would consider offers which exceed ₱300,000 cash. This you ought to say to him verbally, because otherwise those of the assessment office will desire to raise this assessment."

Mr. Beaumont:

Q. I show you these papers, which purport to be copies of letters addressed to you, and which for identification may be marked Exhibits F, G, J, K, L and M, and ask you to examine them, and state whether or not you *to examine them, and state whether or not you* have received the originals, and if so, where those originals are.

243 A. I have three original letters from Mr. Borck and two originals from Mr. Beaumont.

Mr. Beaumont: I ask that the original letters be marked with the same letters as the copies presented to the witness.

Q. Which letter is it that you do not have?

A. (Witness produces originals of Exhibits C, M, L, K, and G.)

Q. I will ask you to look at this Exhibit J, and ask you if any such letter ever came into your hands, and if so what disposition was made of it?

A. I don't remember this letter, but it is practically the same as one of those other; I believe that it related to one of the letters.

Q. Do you remember having received any such letter as that in which the time for payment was made ten days after the delivery of the documents?

A. No, sir; I always remember that letter which states about the payment being made in March.

Q. Wasn't there any letter received from Mr. Borck subsequent to that and that you remember?

A. I don't remember.

Q. You don't deny having received such a letter as this, however, do you,—referring to Exhibit J?

Mr. Escaler: Objection.

Question withdrawn.

Mr. Beaumont: We call upon the defendant to produce
244 Exhibit J.

Q. You have seen the power of attorney, a copy of which is attached to the complaint in this case?

A. I suppose it is the same as the power of attorney that I have; I don't know where they got it.

Q. Have you your power of attorney with you?

A. I didn't bring it with me.

Q. But you have substantially such a power as Exhibit A at the present time?

A. Almost the same as all other powers of attorney.

Q. Will you state what the cable address of Benito Legarda is, in Washington or Paris?

A. In Washington, it is "Legarda, Washington."

Q. Cables which you have exchanged with Mr. Legarda have been sent to that address?

A. Yes, sir.

Q. And, how are the replies to you addressed?

A. Mr. Legarda replies sometimes to the government here, and sometimes "Legarda, Manila."

Q. You mean to say that he uses the government facilities on his private business?

Mr. Escaler: Objection as immaterial.

Question withdrawn.

Q. Then, if it is sent through the government channels, how is it addressed?

A. They don't come addressed to me. For example, there is one here which says: "Forbes, Baguio," and Governor Forbes
245 communicates it to me.

Q. Do you use a code?

A. We don't use any code except we use numbers. That is, the ordinary code which is used by merchants generally.

Q. Do you mean to say, the Western Union code, A B C?

A. I don't know. I believe it is A B C; it is the same code used in the distillery of Mr. Legarda.

Cross-examination.

By Mr. Escaler:

Q. Have you always stated to Mr. Borck that you have to have the consent of Mr. Legarda on any option pertaining to his estate?

Mr. Aitken: Objection as not proper cross-examination.
The Court: He may answer.

A. Yes, sir.
Q. How often have you told him about that?
A. I have always stated to Mr. Borck that it was Mr. Legarda who had the sale of this property.
Q. You also told him when you informed him of the contents of the letter of October, that Mr. Legarda would only consider a price above the assessed price of the property, did you not?
A. Yes, sir.
Q. You have also told him that Mr. Legarda requires that the price be payable cash, did you not?
A. Always.
246 Q. What kind of option did you give to Mr. Borck, if any?

Mr. Aitken: Objection, as not proper cross-examination, and not the best evidence.
The Court: Sustained.

Q. Did you find any of the letters addressed to you by Mr. Legarda concerning the sales of the hacienda of Nagtahan?
A. I have stated already on direct examination that some of the letters of Mr. Legarda I have looked for and have not found them yet.
Q What letters have you in your hand?
A. I have the letter that I have just mentioned here. I have another letter of the 19th of May. I have a letter of the 28th of April. And, I have a letter of the 18th of January.
Q. Have you ever told Mr. Borck that you will give him an option without counting with the approval of Mr. Legarda on the Hacienda of Nagtahan?

Mr. Aitken: Objection, as not material, and attempting to vary the contents of a written document.
The Court: He may answer.
Mr. Aitken: Exception.

A. I have always stated that to Mr. Borck, since 1910, when our negotiations commenced, and he well knows it.
Q. In this letter, Exhibit A, dated December 17, 1910,
247 there is some reference to a certain property within the estate in question. Have you ever sent a cablegram to Mr. Legarda concerning this matter?
A. Yes, sir; I sent a cablegram with the offer of Mr. Borck, and he paid the cable expenses.
Q. And, why did you send the cablegram to Mr. Legarda concerning Mr. Borck's offer referring to in this letter, Exhibit A?
A. I cabled the offer to see if Sr. Legarda was agreeable to sell the property *in* this price that Mr. Borck offered.
Q. Since when have you had power of attorney from Mr. Legarda?
A. Since the last time he left for America. I don't remember the date; but it must appear in the power of attorney.

Q. At the time you sent the cable to Mr. Legarda concerning Mr. Borck's offer in this letter, Exhibit A, were you at that time an attorney-in-fact of Mr. Legarda?

A. I believe so; otherwise I would not have taken any intervention.

Q. Have you ever mentioned to Mr. Borck during the negotiations you have had concerning the sale of the entire property, in regard to which you sent a cable, that you were an attorney-in-fact of Mr. Legarda?

A. I have always stated to Mr. Borck that I am attorney-in-fact for Mr. Legarda only for the making of negotiations, and
248 none of the three of us here who are attorneys in fact, could make a definite transaction or negotiations about any matter.

Mr. Beaumont: I move to strike out, as that is clearly an effort to vary the contract in Exhibit A.

The Court: Ruling reserved until I have examined the document.

Q. Did Mr. Borck instruct you to send the cable that you sent to Mr. Legarda to ask for his consent for the sale of the property referred to in Exhibit A?

A. He stated to me that in order to save time I would better send a cable, and I told him that I was not willing to pay the expenses of the cable. Then he paid for it.

Q. Did you tell him that you were going to send the cable to ask Mr. Legarda's consent?

A. Of course, he know it, because I could not make any transactions or negotiations with him without asking the consent of Mr. Legarda.

Q. Did he ever indicate to you to communicate with Mr. Legarda by cable the offer he has made lately concerning the hacienda of Nagtahan, which is now in question?

A. Yes, sir; he told me to send a cable.

Q. Did he tell you to send a cable to ask Mr. Legarda's -sent to his offer?

A. Yes, sir; he did.

249 Q. Did he refer on that occasion to the offer that is now mentioned here, and which is the object of this action?

A. Yes, sir; he referred to his last offer.

Q. Why did he want you to communicate with Mr. Legarda about his last offer?

A. To find out as soon as possible whether Mr. Legarda accepted the offer or not.

Q. Have you read this letter, Exhibit E, before signing it?

A. I have stated already that I may not have read this letter, because it is written in English. I have already stated that I do not understand English, except technical phrases which are similar to certain phrases in Spanish or French.

Q. In what way did you become acquainted with the contents of that letter before signing it?

A. Mr. Borck himself translated it to me.

Q. Did he translate to you the same words that were translated to

you now by the official interpreter as being the contents of that letter, Exhibit E?

A. Mr. Borck translated this to me, not literally but in a substantial way, stating that this was an option which I would give him for the purchase of the property in question; but always with the consent of Mr. Legarda.

Q. Did he mention to you in the translation he made of Exhibit E, how the price was going to be paid?

250 A. He stated that it would be cash. He stated besides, that payment would be made at once.

Q. Was this letter, Exhibit E, already written when it was presented to you for signature?

A. Yes, sir; he brought it himself.

Q. Have you ever stated to Mr. Borck before the 4th of December, 1911, that you did not know English?

A. He knows himself that I do not know English; and he always talked to me in Spanish.

Attorney for the defendant Legarda, states that he does not desire to cross examine the witness.

Mr. Escaler: Please present to the court the orders and telegrams from Sr. Legarda.

Witness excused.

Hearing continued until the July term of this court.

I hereby certify that the above is a true and correct transcription of the stenographic notes taken by me upon the hearing of the above entitled cause.

_____,
Official Stenographer.

Manila, P. I., April 15, 1912.

251 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of the Judicial District of Manila, Branch II.

Civil Cause No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA et al., Defendants.

Proceedings.

The above entitled cause comming on for a continuation of the hearing before the Honorable Judge Charles S. Lobingier, Branch

II, Court of First Instance for the Judicial District of Manila, on the sixteenth day of October, Nineteen hundred and twelve, at eight o'clock A. M., the following proceedings were had, towit:

Appearances:

Mr. Hartford Beaumont, and Mr. Thos. D. Aitken, for the Plaintiff.

Messrs. Escaler & Salas, by Mr. Escaler, for the Defendant Dr. Valdez.

Messrs. Hausserman, Cohn & Fisher, by Mr. Cohn, for Defendant Benito Legarda.

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Plaintiff:

W. Borek 26
Esteban Alovastro 69

Defendant:

James Ross 54
Alejandro Roces 77
Fernando Calderon 80
Benito Valdez 83
Jose E. Alemany 92
Benito Valdez (recalled) 95
Jose Escaler 101
Alfredo Chicote 103
Manuel E. Cuyugan 104
Mauro Prieto 106

Plaintiff in Rebuttal:

W. Borek 112

253 W. BOREK, the plaintiff, being introduced as a witness in his own behalf, upon being duly sworn, testified as follows:

Direct examination.

By Mr. Beaumont:

Q. What is your name?
A. W. Borek.
Q. Where do you live?
A. No. 157 Calle Isaac Peral.
Q. What is your business?
A. Real estate.
Q. How long have you been in the Philippine Islands?
A. About eight years.

Mr. Beaumont: I would like to interrupt the witness at this point in order to offer all the exhibits from A to M. which were identified by the preceding witness.

Mr. Cohn: Object to the admission of these documents on the ground that they are incompetent, immateral and irrelevant; objection being made on behalf of defendant Benito Legarda.

Mr. Escaler: Same objection, on behalf of defendant Dr. Valdez.

The Court: Ruling reserved.

Q. Mr. Borck, when did you first begin to negotiate with Dr. Valdez with respect to the purchase or sale of the Hacienda
254 Nagtahan?

A. The first time was about in March or May, 1910, I had wanted three hundred thousand meters of land, and I went to Dr. Valdez, knowing the hacienda, and asked Dr. Valdez if he could not sell three hundred thousand meters, and he said that he could not sell three hundred thousand meters, and that Mr. Legarda wished to sell the whole hacienda, and if I wanted to buy three hundred thousand meters, he would have to ask Mr. Legarda first, and he told me that he would communicate with Mr. Legarda, if he would sell three hundred thousand meters of the estate.

Q. What was your next negotiation?

A. This was when the answer came back that Dr. Legarda conformed to sell three hundred thousand meters, at 30 cents but at that price I offered 25 cents, I could not sell it at thirty—I could not come to a sale. When I told Dr. Valdez that I wanted to buy three hundred thousand meters, he asked me why didn't I buy the whole hacienda. "Mr. Legarda wishes to sell the whole hacienda, not a part of it," he said.

Q. I will show you exhibit A, and ask you to state what connection that has with the testimony you have given in regard to the first negotiations.

A. This is the option I received from Dr. Valdez——

Mr. Cohn: Before the witness answers, I wish to have it
255 appear that we, on behalf of defendant Legarda, object to all questions regarding these exhibits, as well as to the exhibits themselves.

Mr. Escaler: The same objection on behalf of Dr. Valdez.

The Court: Same ruling.

A. (continued), after a communication from Dr. Legarda.

Q. You said that no sale resulted from this first negotiation; when were they renewed?

A. When he told me to sell the whole hacienda, I told him that I would not buy it at present, but I would do my best to sell or buy it. I then negotiated with some people about this hacienda, and in about August, 1911, I made him an offer of ₱200,000 to buy the whole hacienda, in payments of ₱50,000 each.

Q. What was the result of that offer?

A. The result of that offer was that the price was very low, below the assessed valuation, as he told me, and he could not conform, but he told me that he would forward my offer to Mr. Legarda. I asked

him that if he cannot accept this offer, to let me know the lowest price he will accept, because he wants to sell.

Q. Do you know whether your letter of August was actually forwarded to Dr. Legarda or not, and if so, how do you know?

A. I have not seen it, but he told me that he would and he told me afterward that he had.

256 Q. I show you exhibit D and ask you to state what it is.

A. About three or four months afterward—I was always working on this hacienda to get a better price, as I had no expectation that Dr. Valdez would accept this offer of two hundred thousand pesos, as I thought myself it was too low, so I worked on it all the time, ever since, I had been working to get a better price. I had had an opportunity of looking the property over, so I knew exactly about it, what the value was, and I succeeded in interesting several parties in the purchase, and I had received one offer, from Mr. Ross, of Bruce, Lawrence, Ross & Block. Then I knew that I could get a better price for the hacienda, and I wrote a letter to that effect to Dr. Valdez, through my office boy; on the envelope of this letter he invited me to his office.

The Court: Wo did?

A. Dr. Valdez, and I went there.

Q. What is this Exhibit D?

A. That is the envelope, returned by Dr. Valdez through my office boy.

Q. What communication did this envelope, Exhibit D, cover? What letter was enclosed?

A. That was a letter in which I told him I believed I could offer a better price now, or arrange a better price now if he would give me an option, so I received his option. I went there and I got the option.

257 Q. Look at this Exhibit C and state what reference, if any, that had to the things you have just been testifying about.

A. I requested him to give me an option, as I had several people interested. I said one, but I had several people interested in the purchase of the hacienda, and I knew that I could get a better price than before.

Q. Referring once to Exhibit D, I call your attention to the handwriting on the upper part of the envelope; I will ask you if that was there when the envelope left your office.

A. No, it came back that way from Dr. Valdez.

Q. Do you know who wrote it?

A. No, my office boy was there.

Q. Do you know the handwriting?

A. The handwriting I know.

Q. As a result of this invitation contained on the envelope, Exhibit D, did you go to Dr. Valdez' house?

A. I went to his house and he told me that he received a letter from Mr. Legarda, in which he instructed him to sell the hacienda for its assessed valuation, and not less.

Q. Then what took place after that?

A. I asked him the "Well, can you give me—that is a high price,"

I told him, and I needed some time to complete the transaction, because it will be difficult to get that price, and I asked him to let me have three months' option, and he said "All right" that he
258 could give me three months' option, and I told him then "Do you want me to write out the option, or will you write it," and he said "You had better write it and I will sign it then," and I asked him "Do you want it in Spanish or in English" and he said "It does not matter," so I wrote it in English, and I brought it there the next day I think it was the second of December. No, I think it was on the 4th of December, at 12 o'clock, at his residence, then No. 195 Calle San Sebastian. There was nobody there but he and I. I gave him the option and he read it, there at the window, and he said "This is all right, but I don't want you to put in the assessed valuation, in figures, because you have three months' option, and in that three months the Government might raise or lower the assessment, and as I have instructions to sell for the assessed valuation, I would rather have you put 'for the assessed valuation.'" Then I took this—this was written in English—then I took it back and told him I would change it and bring him the same option, written the same way except that I would leave out the figures, the assessed valuation. I brought him the option, leaving out the assessed valuation in figures, and he signed it.

Q. I show you this Exhibit E and ask you to state what
259 that is.

A. That is the option given me by Dr. Valdez.

Q. What became of the previous option, the previous paper that you spoke of, in which the price in pesos and centavos was?

A. That was destroyed, because it was of no use.

Q. I show you this document, which for identification may be marked Exhibit N, and ask you to state what it is, when it was prepared, by whom, and where.

A. This was given me by Dr. Valdez in the office of the estate, in Calle San Sebastian.

Q. Under what circumstances?

A. Because I had not known the correct assessed valuation, and therefore I asked him to let me have it. He promised to let me have it. A few days afterward I went to his residence, and we both went to the estate's office and there he made out this assessed valuation and gave it to me, taking it from the books of the estate.

Q. Whose handwriting is that?

A. I believe Dr. Valdez wrote that himself, but I am not sure. It might have been a clerk, I cannot remember.

Q. Who was present when that was written?

A. I was there, yes sir.

Q. Was Dr. Valdez there?

A. Yes sir.

Q. What was the purpose for which this was given to you?

A. For the purpose of knowing the price he sold it to me.

260 Q. What was the order of events? What was the relation of time this had to the signing of the option, Exhibit E?

A. That named the price.

Q. No, I say what was the order of the events, what relation in respect to time did this have, was it before or after the signing of the option?

A. After.

Q. How long?

A. Three days after, I believe it was.

Q. Then, having obtained this option, Mr. Borck, did you make any efforts to dispose of it?

A. When Dr. Valdez gave me the option, he said "You have to sell this within three months. If you don't sell within three months I cannot give you an extension, I will have to give it to another broker, because others have applied for it.

Q. Did you enter into negotiations with any third parties?

Mr. Cohn: Objected to as immaterial.

Mr. Escaler: Same objection.

The Court: Objections overruled.

Mr. Cohn: Exception.

Mr. Escaler: Exception.

A. Negotiated to sell the hacienda, yes sir, with Mr. Ross, of the firm of Bruce, Lawrence, Ross & Block.

Q. I show you this letter, which may be marked Exhibit O, for identification, which is a letter dated January 17th, and
261 ask you to state what that is and by whom it is signed.

A. Yes sir, this is an offer from Mr. Ross for the purchase, which I received and accepted.

Q. I show you another letter, dated January 19th, which may be marked for identification Exhibit P, and ask you to state what it is.

A. Later on—I had verbally only accepted the offer, for the time being—I told him I would not accept it for certain, but I would see him in a few days.

Mr. Cohn: Move to strike out as not responsive.

Mr. Escaler: The same motion.

The Court: The letter itself shows what it is, does it not?

Mr. Beaumont: I only want to show the order of events, the relation to the other exhibits.

Q. When did you receive this letter, Exhibit P?

A. This I received a few days after the first offer, and this offer I accepted by letter.

Q. Now I will show you Exhibit F, and call your attention to the fact that it has the same date, January 17th, as Exhibit O, and ask you to state the circumstances under which Exhibit O was signed.

A. This is my acceptance of the option of Dr. Valdez.

Q. How does it happen that it has the same date as Exhibit O?

A. Because I don't believe in hanging back with my busi-
262 ness. I conclude it as soon as possible; as soon as I got the offer, I made by acceptance to Dr. Valdez.

Q. I call your attention next to Exhibit G, and call your attention to the fact that it bears the same date as Exhibit P, January 19th, and ask you how this happened to be made the same date.

A. That is on account of the first offer I received. It was rather a long time, and I did not want to wait, because my option was up on the 4th.

Q. Then on January 3rd you appear to have written the letter Exhibit J, which appears in evidence; will you state the circumstances under which that was written. Why did you write to Dr. Valdez again after having accepted his offer?

A. Because I wanted to make it as good as possible for Dr. Valdez, and I therefore changed the offer, as I had an offer for six days—I had it for ten days, but I thought — make it for six days, because I thought there might be some trouble about the documents.

Q. Do you remember when your option expired, according to the terms?

A. The 4th of March, 1911, or 1912, I mean.

Q. I call your attention to Exhibit K, which is a letter dated February 28th, and ask you to state why that letter was written.

263 A. Because the purchaser told me the money was ready and would be paid over as soon as the documents had been seen and inspected.

Q. When did you first have reason for suspecting Dr. Valdez of an intention not to carry out the terms of an agreement that you had made with him?

Mr. Cohn: Objected to as incompetent, irrelevant, and immaterial.

Mr. Escaler: Same objection.

The Court: It is calling for the conclusion of the witness.

Mr. Beaumont: I will withdraw the question.

Q. Were you at any time led to believe that Dr. Valdez was not carrying out the agreement?

Mr. Cohn: Same objection.

Mr. Escaler: Same objection.

Mr. Beaumont: I will withdraw the question.

Q. Mr. Borck, will you state what negotiations or interviews or communications of any kind you had or attempted to have with Dr. Valdez, subsequent to February 28th, the date of the letter which appears in the record as Exhibit K?

A. Conversations I had several with Dr. Valdez, and he always had some excuse.

Q. Subsequent to February 28th, when you wrote the letter which appears in the record as Exhibit K?

264 A. Well then, this letter was written in my lawyer's office, Mr. Beaumont's, because I thought then that there was something funny about the deal, and there was always some excuse, so I took it to my lawyer, Mr. Beaumont, and there this letter was written.

Q. Did you call on Dr. Valdez?

A. I called on him with my lawyer, Mr. Beaumont.

Q. How many times?

A. I think we called there once or twice, but we did not find him in, but we found Mr. Prieto.

Q. What efforts, if any, had you been making previous to this to obtain possession of the Torrens Title Deed?

A. I made several efforts to get the Torrens Title Deed, and after I had made my offers I went to Dr. Valdez and asked him to let me have the deeds, as before he said "If you make me a direct offer I will turn over the deeds." When I made the direct offer, I went to him and I asked him for the documents.

Q. Did you obtain them?

A. I did not; Dr. Valdez told me then that he wished to communicate with Mr. Legarda.

Q. When was this?

A. This was made about—I think it began in February, I don't know exactly the date—I think it was about the 18th of February.

265 Q. Previous to that why had you not obtained the title papers? Before that why had you not obtained the Torrens Deeds?

A. Dr. Valdez, when I made the first offer, the offer was made payable after the option was up, the first of May, and he told me that that would be too long, and he said that that was beyond my option. I said "I think I can change that." I went to Judge Ross and told him about that, that he must make me a direct offer, otherwise I could not get the documents. Then he made me a second offer, which I accepted. Then I wrote my offer to Dr. Valdez, payable on the 3rd of March. Then I wrote another offer, payable within ten days. Then I went again to Dr. Valdez and asked him for the documents.

Q. What reason, if any, did he give for not turning over the documents when you asked for them?

A. When I came there and asked for the documents, I thought I had complied with his wishes; he told me, to my surprise, that he wished to communicate with Mr. Legarda.

Q. When was this first called to your attention?

A. That was after I had made the second or third offer.

Q. What finally became of the negotiations for the sale of the property for which you have testified was evidenced by the two offers, on the exhibits O and P on one side, and a written acceptance on your part on the other? What became of these negotiations? What became of the sale?

266 A. Of the sale to Mr. Ross?

Q. Yes.

A. Why, I accepted his offer and then I went to him and told him that Dr. Valdez wishes to communicate with Mr. Legarda, and I told him after we had written the direct offer he would not turn the documents over. I told Mr. Ross about that.

Q. I show you this letter, which may be marked for identification Exhibit Q, and ask what connection that has with the testimony you have just given?

A. This was about the 11th of March, in my lawyer's office. We were talking about what to do, and then Mr. Beaumont when we found out they would not turn over the documents, we thought it

would be our duty to inform Mr. Ross about it, and so we did, by this letter.

Q. By whom was this letter signed?

A. This letter was signed. This letter is from Mr. Ross; that is an acknowledgment of our offer.

Q. At what price did you contract to sell this hacienda to Judge Ross?

A. Three hundred and eighty thousand pesos.

Q. What was the price at which you were to purchase it?

A. Three hundred and seven thousand pesos.

Q. Was your loss on account of the refusal of the defendant to carry out this agreement more or less than seventy three thousand pesos?

267 Mr. Escaler: Objected to.

Mr. Beaumont: I will withdraw the question.

Q. As a consequence of the breach of the contract by the defendant, were you put to any unusual expenses, and expenses which you would not otherwise have gone to?

A. I was put to great expense and inconvenience.

Q. What was the expense?

A. The expense that I had contracted on business that I could not carry out, and I had to pay money into Court, and I also could not do anything; I lost time, I could not do anything but attend to this case, and I was hind-red from doing business that I had contracted for.

Q. Were you compelled to make, or did you make any contracts for service which would not otherwise be necessary?

A. I contracted with my lawyers, Mr. Beaumont and Mr. Aitken.

Q. In what sum?

Mr. Cohn: Objected to as incompetent and irrelevant.

Mr. Escaler: Same objection.

The Court: May answer.

Mr. Chon: Exception.

Mr. Escaler: Exception.

A. Five thousand pesos each.

Q. Mr. Borck, in another case which is on file in this court, arising subsequent to the events concerning which you have testified, you applied for suspension of payments (special payments); did
268 that actually have any connection with this matter?

A. That was a direct result of not carrying out the contract, because I could not meet my obligations on account of it.

Q. What, if *nay*, financial loss or damage did you suffer on account of this proceeding?

Mr. Cohn: Objected to as incompetent, irrelevant and immaterial.

Mr. Escaler: Same objection.

The Court: Overruled.

Mr. Cohn: Exception.

Mr. Escaler: Exception.

A. I had to stand a lot of expenses in Court proceedings, lawyers' fees, and loss of time, and a loss of strength and money.

Q. What was the total amount of your obligations as revealed by these proceedings?

Mr. Escaler: Objected to as not the best evidence.
Mr. Cohn: Same objection.
The Court: May answer.
Mr. Escaler: Exception.
Mr. Cohn: Exception.

A. About eighteen thousand pesos.

Q. And did you suffer any loss of reputation or credit as
269 a result of those proceedings?

Mr. Cohn: Objected to as incompetent, irrelevant and immaterial.
Mr. Escaler: Same objection.
The Court: May answer.
Mr. Cohn: Exception.
Mr. Escaler: Exception.

A. The people lost their confidence in me, they always had had confidence, but when this proceeding was started, they lost it; they had had good confidence in me.

Q. What was the extent of that loss, financially?

Mr. Escaler: Objected to as incompetent and irrelevant.
Mr. Beaumont: Question withdrawn.

Q. Mr. Borck, you have stated that this insolvency proceeding or special payment proceeding was caused by the failure of defendants to carry out their obligations. Will you state exactly why you made that statement; state exactly what you mean?

A. Because it caused me much loss, and I think the people who caused me that loss ought to make good.

Q. (Previous question repeated.)

Mr. Cohn: Objected to as incompetent and immaterial.
Mr. Escaler: Same objection.
The Court: Objection overruled.
270 Mr. Cohn: Exception.
Mr. Escaler: Exception.

A. I made that statement because I wanted to state the truth, that is why I made that statement. It is a loss to me.

Q. In what way did the breach of contract cause the insolvency proceedings?

Mr. Escaler: Same objection.
The Court: Overruled.
Mr. Escaler: Exception.
Mr. Cohn: Exception.

A. Because the people thought they had a hold on me to recover the money by getting this claim, recover the money I owed them.

The Court: Do you mean that the knowledge that you had such a contract precipitated a pressure of your creditors?

A. Yes sir.

Q. Then it was the making of the contract rather than the alleged breach of it?

A. No, the people knew that I had this contract and they tried to get it for the amount I owed them. They tried to get it through Court proceedings, then they would have made so much more.

Mr. Beaumont: You spoke of a loss of time as a result of this breach of contract; will you explain how much time you
271 lost, how many days.

A. Well, I lost, so to say, I lost three months, at least.

Q. What have been your average monthly earnings during the last year?

Mr. Escaler: Objected to as incompetent, immaterial and irrelevant.

Mr. Cohn: Same objection.

The Court: Overruled.

Mr. Escaler: Exception.

Mr. Cohn: Exception.

A. I made in one year thirty six thousand pesos, and I could have made more in this year if the contract had been carried out.

Q. During the last two years, what have been your average monthly earnings?

Mr. Escaler: Same objection.

Mr. Cohn: Same objection.

The Court: Same ruling.

Mr. Cohn: Exception.

Mr. Escaler: Exception.

A. About forty-four or forty-five thousand pesos.

Q. For two years?

A. Yes sir.

Q. At the time that you accepted this contract, or this offer,
272 as shown by the exhibits on record, had the offer been withdrawn in any way, or during the time from the signing of Exhibit E until the end of the period mentioned in that document, had that offer been withdrawn?

A. The offer from Ross?

Q. No, from Valdez.

A. The offer from Valdez was never withdrawn.

Q. Of what does this hacienda of Nagtajan consist?

A. It consists of about 1,900,000 meters of land.

Q. Where is it located?

A. Sampaloc, Nagtajan and part of it reaches into Rizal.

Q. Some part of it reaches into Rizal? Where is the rest of it?

A. Sampaloc and Nagtahan.

Q. City of Manila?
A. Yes sir.
Q. How long have you been in the real estate business?
A. About eight years.
Q. What familiarity, if any, have you with the value of the land embraced within the hacienda?

Mr. Cohn: Objected to.
Mr. Escaler: Objected to.
Mr. Beaumont: This question only goes to show the familiarity of the witness with the value of the land.
Mr. Beaumont: It is stipulated and agreed by and between the counsel representing all parties that the assessed valuation of
273 the land at the time of the alleged offer and acceptance is duly stated in the petition at ₱306,954.
Mr. Cohn: It is moreover stipulated and agreed by and between the respective parties that the assessed valuation of the property is ₱306,854, and such was the assessed valuation on all the dates mentioned in the complaint.

(Question withdrawn.)

Cross-examination.

By Mr. Cohn:

Q. Mr. Borck, prior to the instrument which is the subject matter of this action, you have had several negotiations with Dr. Valdez relative to this hacienda or portions of it?
A. Yes sir.
Q. And on each of these occasions you were given to understand that the agent, Dr. Valdez, required to confer with Sr. Legarda?

Mr. Aitken: Objected to as incompetent.

A. When I had the first contract with him about the 300,000 meters, he said that he would have to request Sr. Legarda if he wished to sell 300,000 meters, and he said that he wanted to sell the whole hacienda, and he did not know if he would be willing
274 to sell part of it.
Q. He never made any agreement with you respecting the hacienda or any part of it without first consulting Sr. Legarda?
Mr. Aitken: Objection.
The Court: Overruled.
Mr. Aitken: Exception.

A. No, I had made the offer of ₱200,000; he said that was low, and that he could not accept without consulting Legarda, and he said that he would forward my offer to Mr. Legarda, or would ask him the very lowest price.
Q. The same answer, or a similar answer was given every time you negotiated, was it not?

Mr. Aitken: Objection.

The Court: Overruled.
Mr. Aitken: Exception.

Q. Prior to the occasion in question, prior to this particular occasion which is in controversy, you were told every time that you negotiated with Dr. Valdez that he would do nothing without consulting Legarda.

A. I wanted to purchase these 300,000 meters, he said that he didn't know whether he wanted to sell part of it; when I made the offer of ₱200,000, he said that he could not very well accept
275 that, because it was very low.

Q. Now on the occasion of the option, that is here marked Exhibit A, respecting the purchase of a portion of the hacienda Nagtahan, you furnished the funds for cabling Mr. Legarda, asking his authorization?

A. No, that was the offer. After I had my option I wanted him to notify Mr. Legarda that I had that option, which would be correct, as they might do something over there. I wanted him to know it.

Q. You wanted Mr. Legarda to know that you had the option?

A. Yes sir.

Q. That was the only purpose for cabling.

A. Nothing else.

Q. To what option are you referring to now?

A. This last option I had, for three months.

Q. The option which is in controversy here?

A. Yes sir.

Q. Now, I am speaking of the old option, which is marked Exhibit A in the record, the arrangement for the purchase of three hundred thousand meters of the hacienda; you furnished the funds for asking the consent of Sr. Legarda to that option, did you not?

A. Dr. Valdez wanted to write, and I said it was too slow, and that he had better send a cable. He said it would cost too much and that he didn't want to pay for a cable.

Q. You paid for the cable?
276 A. Yes sir, he wrote it out and I paid for it.

Q. What arrangements, if any, were made for asking for the authority of Sr. Legarda for the option which is in controversy here?

A. There was no arrangement. When I made this offer of the two hundred thousand pesos, the arrangement was made between Legarda and Valdez, according to the price. On account of this arrangement I received my option.

Q. This option, then, you received without any previous communication of the proposition to Mr. Legarda?

Mr. Aitken: Objected to as already answered.
The Court: Overruled.
Mr. Aitken: Exception.

A. No, Mr. Valdez communicated this offer of mine for ₱200,000 and asked him to let him have the lowest price he wanted for the

hacienda. Then I got this option, according to that agreement between Valdez and Legarda.

Q. You know that there was such an agreement between Valdez and Legarda?

A. Yes sir.

Q. How do you know that?

A. Dr. Valdez told me himself.

The Court: Told you what?

277 A. That Mr. Legarda had given him the lowest valuation as the assessed valuation.

Beaumont:

Q. When did Valdez tell you that?

A. He told me when I sent him a letter after I had made the first offer of ₱200,000, then about three or four months afterwards I sent a letter up to him and told him I could get a better price, and he sent me on the back of the envelope that he had received the letter in, and invited me to come up to his office. When I came up there, he told me that he had received a letter from Mr. Legarda in which Mr. Legarda told him, and not less.

Q. When you agreed with Dr. Valdez to communicate this option of December 4th to Mr. Legarda, that was only for the purpose of informing Mr. Legarda, you say, that you had such an option?

A. No, that was before; if I recollect rightly, that was when I made this last option; I wanted him—he said he wanted to notify Sr. Legarda by letter, and I said that was too slow, you had better cable.

Q. When did you say that?

A. A day of two afterwards, when I got that assessed valuation.

Q. What was the purpose of urging haste in informing Mr. Legarda?

A. Because I had several deals here, and I could only ac-

278 cept one offer. These people I could not sell to might have made a direct offer to Mr. Legarda, and I wanted to prevent any difficulty.

Q. You wanted to prevent any person with whom you might be dealing from anticipating you?

A. I wanted to prevent any difficulty by informing Mr. Legarda at once that I had the option for three months.

Q. Difficulty with whom?

A. It might cause trouble by Mr. Legarda's giving an option over there, and I had an option over here; it is merely a matter of business. Anyone who knows anything about business knows that.

Q. Did Mr. Valdez discuss with you the cost of the cable respecting this option?

A. No, I believe I paid something like ₱21; I don't remember.

Q. For cabling respecting this present option?

A. No, I can't remember; that was I think on the first option.

Q. Didn't Mr. Valdez discuss with you who should pay the cable respecting this option?

A. I believe so, I believe I agreed to pay for that cable.
Q. Did you ever pay for it?
A. I included the price in that amount, I told him I would make it three hundred and seven thousand pesos in round numbers instead of ₱306,954.00.

279 Q. You told Dr. Valdez that you would make the price ₱307,000 in round numbers instead of ₱306,954, in order that that might cover the cost of the cable to Mr. Legarda?
A. Yes sir.
Q. You say that you drafted the Exhibit E, you copied the option Exhibit?
A. That is the option?
Q. Yes.
A. That I proposed it?
Q. That you composed it.
A. He told me to write it up; I asked him if he wanted to do it and he said no, that I had better do it.
Q. You took it there in person?
A. Yes sir.
Q. Who translated it?
A. He read it, the first time in English; then he told me to leave out the figures.
Q. So that both the first and the second drafts were in English, and were read by Dr. Valdez and were not translated to him by anybody?
A. No.
Q. Is it not a fact that when you took both the first draft and the second proposed option to Dr. Valdez that you told him that that was a proposition to purchase the hacienda which should be communicated to Sr. Legarda for his authorization?

280 Mr. Aitken: Objected to as evidently an attempt on cross examination to show that Dr. Valdez did not know the contents of this document. In the pleadings the due execution is admitted. It is also incompetent, irrelevant and immaterial.
The Court: Ruling reserved.

(Answer to this question will be found on page 61.)

At this juncture, the cross-examination of the witness Borck was interrupted for the purpose of taking the testimony of Judge James Ross.

JAMES ROSS, a witness for the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Beaumont:

Q. State your name.
A. James Ross.
Q. Address?

A. Manila.
Q. Occupation?
A. Attorney at law.
Q. You are one of the firm of Bruce, Lawrence, Ross & Block?
A. Yes sir.
Q. And as such practice law in the City of Manila?
A. Yes sir.

281 Q. I show you exhibit O, and ask you to state what that is and under what circumstances it was written.

A. That is a letter written by the firm of Bruce, Lawrence, Ross & Block, by myself, the 17th of January, 1912, addressed to Mr. W. Borck.

Q. I show you another exhibit, Exhibit P, and ask you to state what that is.

A. That is a letter written by my firm, signed by myself to Mr. Borck, dated the 19th of January, 1912.

Q. Following this letter of January 19th, which you have referred to, as Exhibit P, was any answer received?

A. I have here two letters, one from Mr. Borck dated the 15th of March and one from Mr. Beaumont, dated the 8th of March.

Q. I call your attention to this carbon copy of a letter dated January 20, and ask you if you have ever seen the original of that? (Marked for identification Exhibit R).

A. I could not swear that that is a literal copy. I received one substantially to that effect.

Q. Where is that letter?

A. It is possible it is in our correspondence files. I looked over the files and brought, I thought, everything from Mr. Borck regarding this matter.

Q. Will you look through your files when you return to the office and see if you can find that?

282 A. Yes sir.

Q. Subsequent to that, was there any further communication exchanged in regard to this transaction?

A. The letters I have given to you a moment ago are dated March 8th and March 15th.

Q. I ask that this be marked for identification Exhibit S, and I will ask you when you received this, about when.

A. Presume about the date it bears.

Q. That is March 8th?

A. I presume it came about that time.

Q. I show you another document, marked Exhibit Q, and ask you to state what it is and by whom it was signed.

A. By the firm, by W. H. Lawrence.

Q. In this Exhibit Q, you withdraw your offer of acceptance. Will you state if there were any other reasons for the withdrawal except those that appear in the document?

A. I was not here at the time.

Q. So far as you know were there any?

Question withdrawn.

Q. At the time these offers were made, and this communication had, your firm was prepared to finance the operation?
A. The firm, no.
Q. You yourself?
A. Not I personally.
Q. Were there any arrangements by which it could be financed?
283 A. A client of ours was prepared to purchase the property, if he could have done so on satisfactory terms.

Mr. Beaumont: Offer in evidence Exhibits O, P, Q, and S.

Cross-examination.

By Mr. Cohn:

Q. You stated, Judge Ross, that there was a letter relative to this matter dated March 15th.
A. Yes sir.
Q. Will you kindly produce this letter?
A. Here it is.

Mr. Cohn: I ask that this be marked for identification Exhibit 100.

Q. Who was the client to whom you have referred in your direct examination?

Mr. Beaumont: Objected to as immaterial, and a privileged communication.
Witness: I would much prefer not to answer the question, as it involves confidential matters of our office. We were prepared to make the offer good.
Mr. Cohn: I insist on my question.
Mr. Ross: This is a privileged communication and I prefer not to answer it. I was expressly instructed that the identity of my client was not to be disclosed until the matter was finally consummated, and Mr. Borek was satisfied to accept our offer.
284 The Court: Objection is sustained.
Mr. Cohn: Exception. I move to strike out the testimony of the witness as to the ability of his client to consummate this purchase.
The Court: Denied.
Mr. Cohn: Exception.

Q. Please state whether the clients to whom you refer, either directly or through representatives, negotiated the purchase of the hacienda Nagtahan with Mr. Benito Legarda.

Question changed.

P. Please state whether the clients to whom you refer, either directly or through representatives, were in with Sr. Benito Legarda regarding the purchase of the hacienda.
A. Not that I know of.

Q. Please state whether the clients to whom your refer, or any of them, either directly or indirectly, were in communication with Benito Legarda directly in the months of December, 1911 or January, 1912, relative to the purchase of the hacienda Nagtahan.

A. If they were it was without my knowledge. I don't know.

Q. Please state the reasons for the withdrawal of the offer of your office to Mr. Borck, set forth in your letter of March 11th, Exhibit Q.

Mr. Aitken: Objected to as the letter itself is the best evidence.

285 The Court: May answer.

Mr. Aitken: Exception.

A. I don't know personally any reasons that Mr. Lawrence had in mind at the time this letter was written. I can answer as to reasons of my own prior to that time.

Q. What were those reasons?

Mr. Aitken: Object to the form of the question.

Mr. Ross: I might add that the reasons were disclosed to Mr. Lawrence and may have had something to do with his writing the letter.

The Court: May answer.

Mr. Aitken: Exception.

A. Mr. Borck did not at any time, and never has, presented me the evidence of title which we desired to see before consummating the purchase. He throughout the negotiations told me that he had an option on the property, which I repeatedly asked him to show me. My clients refused to proceed with the matter unless they were assured that Mr. Borck had authority to make the conveyance of the land. He put me off from time to time about showing me his contract and finally refused to let me see it, whereupon I communicated with my clients, and they said that if that was the case, they were convinced that Mr. Borck had no authority to sell the property, and to drop all negotiations with him.

286 Redirect examination.

By Mr. Aitken:

Q. Prior to your withdrawal, if Mr. Borck had produced to you the document of title, and demonstrated to you his ability to convey, your reason for withdrawal would not have existed?

A. No sir, if he had produced the documents of title and demonstrated his ability to convey, in other words, if he had produced a deed signed by Don Benito Legarda, or by himself as attorney in fact, for Benito Legarda, we would have paid the money, taken the documents, and taken possession of the property.

Redirect examination.

By Mr. Cohn:

Q. In other words, the reason you wanted to see the title was to see Mr. Brock's title, not Mr. Legarda's title?

A. Certainly, we wanted to be sure that he would be able to transfer the title.

Q. You had means to know, or knew all about Mr. Legarda's title, did you not?

A. I had never seen the certificate, but I had no doubt in the world as to his being the owner of the property.

Q. You had access to the register?

A. Yes sir, I did not look at it.

Q. Had you desired to look at it, you knew how to assure
287 yourself of the fact of Mr. Legarda's title?

A. I think so.

Redirect examination.

By Mr. Beaumont:

Q. You were furnished with a certified list of the record at the registration office?

A. Mr. Borck furnished me with a list, I don't remember whether it was certified or not, of the leases existing upon the property, which was one of the things we *we* desired to have information about.

Recross-examination.

By Mr. Cohn:

Q. When was this?

A. I don't remember the exact date, I think it must have been probably about the latter part of February, or the middle of the latter part. I know I went to Iloilo about the first of March, and it was before that.

Witness excused.

Plaintiff recalled for further cross-examination.

By Mr. Cohn:

A. (To question on page 54) It was an option, giving me the option—I told him nothing. He read it, and when he read it he signed it, and he was satisfied.

Q. Is it not a fact, Mr. Borck, that Mr. Valdez believed
288 that this instrument concerned an authority from Mr. Legarda?

Mr. Aitken: Our objection will be understood to cover all this line of cross examination?

The Court: Yes.

A. No sir.

Q. Is it not a fact that cable regarding which you were discussing with Mr. Valdez was a cable asking for the authority and consent of Mr. Legarda to this offer?

A. No sir.

Cross-examination.

By Escaler:

Q. You have spoken of a cable that was going to be sent to Mr. Legarda regarding your former option upon 300,000 meters. Did you write that cable yourself?

A. Yes, sir, I think that cable was sent and I paid for it, I paid in cash.

Q. That first cable that you have paid for, you have asked for the consent of Mr. Legarda for the sale of the hacienda did you not, to the extent of three hundred thousand meters?

Mr. Aitken: Objected to as the cable itself is the best evidence.

Mr. Escaler: I will withdraw the question.

289 Q. When did you send that first cable?

A. I don't remember the date, but the record may be in the cable office.

Q. Was it before December, 1910?

A. No, before December, 1910, it must have been August or July.

Q. 1910?

A. I believe so, but I cannot remember the date.

Q. About the second cable, did you instruct Dr. Valdez how to write it, about the option now in question?

A. The second cable?

Q. Yes, to be sent to Legarda.

A. Yes sir, regarding the second option. I asked him to notify Mr. Legarda by cable that I had the option, because that would be proper in a transaction like that.

Q. And Dr. Valdez told you that he did not want to send the second cable because he did not want to pay for it?

A. Yes sir, he said that he had written; I said "you had better cable, so that he will know at once that I have the option."

Q. You had been to see Dr. Valdez to inquire about the answer to the cable you wanted him to send to Mr. Legarda?

A. Yes sir.

Q. When you went to see Dr. Valdez, upon his invitation, according to your statement, did he show you the letter he received from Dr. Legarda?

290 A. No, he did not.

Q. Was he reading the letter when he informed you of the contents?

A. He said that he had been instructed to sell for the assessed valuation; he then told me that he would give me an option, but he told me that I must sell it within three months, and if I did not sell it within three months he could not give me an extension and that in case I did not sell he will give the option to some other real estate broker, as several had applied for the option.

Q. Dr. Valdez told you, did he not, that he wanted you to sell this property in a short time, because he stated to you that if it was

going to be sold at all, he was to get the price at once, did he not?

A. No, I had then until the option ran out to pay for it.

Q. Didn't he tell you that he would not give you a long option because if the hacienda was going to be sold the money should come immediately?

A. He told me that he could give me a three months' option; that there was no objection to giving me a three months' option, and he did so.

Q. You had also been to see Mr. Prieto, to see if he had received an answer from Mr. Legarda regarding the option in question?

A. That was after my offer and they had to cable again. I
291 had made the offer, then we expected a cable from Mr. Legarda, or Mr. Prieto, because they said, as a matter of form they wished to inform Mr. Legarda. I said "Isn't the option good, you gave the option," and they said "certainly it is good," and that it was merely a matter of form to notify Mr. Legarda.

Q. Mr. Valdez refused to have any further transaction with you without getting the answer from Legarda?

Mr. Aitken: Is our objection carried through on this?

The Court: No.

Mr. Aitken: We object as incompetent and irrelevant and immaterial.

The Court: Overruled.

Mr. Aitken: Exception.

A. Well, he said that he wishes to wait until Mr. Legarda acknowledges receipt of the letter in which he was informed that I had accepted my option for purchase.

Q. Formerly, in your letter dated December 2nd, you asked Dr. Valdez to give you a month's option, didn't you?

A. Yes sir.

Q. And subsequently, on the 4th of December, you asked for a three months' option?

A. Yes sir.

Q. Why did you ask for the month's time?

A. I didn't think that he would ask as much as ₱307,000.
I thought that pretty high. When he told me, I told him
292 "if you want me to work successfully, I think you ought to give me three months' option, because it requires so much time. He said there was no objection whatever, that he would give me three months.

Q. Dr. Valdez gave you three months because he wanted to wait for Legarda?

A. No, he was instructed by Mr. Legarda to sell, because — was instructed by Mr. Legarda to sell.

Q. You took no other steps in regard to your transaction with Dr. Valdez, waiting for the answer of Mr. Legarda, is that not so?

A. Well, I didn't know what to believe in this matter, what the real facts were, but that was the excuse, and then I got to kind of

distrusting in the matter, and I went to Mr. Beaumont, as a lawyer, and asked his advice.

Q. When Dr. Valdez informed you about the letters he has received from Mr. Legarda, he told you that Mr. Legarda would not receive any offer for less than the assessed value, in cash?

A. He told me that Legarda had instructed him to sell for the assessed valuation, and not less.

Q. Did you discuss at any time with Dr. Valdez as to the terms of payment of the purchase price?

A. Terms were not discussed, because the payment was to be in cash, upon the production of the documents.

293 Q. That was the understanding from the beginning?

A. Not from the beginning, because I wanted to have time to examine the documents.

Q. You wanted to see all documents relating to the hacienda before you made a definite offer, is that it?

A. Yes sir, I wanted to see all these papers, and inspect the title deeds and all papers connected with the hacienda.

Q. And you were not willing to buy the hacienda without seeing these papers, were you?

Mr. Aitken: Objected to.

Mr. Escaler: I withdraw the question.

Q. Did you pay anything for the option?

Mr. Aitken: Objected to as immaterial.

A. I did not pay anything for the option.

The Court: He has already answered.

Q. In what language did you communicate with Dr. Valdez?

A. Mostly in English.

Q. When you came to see Mr. Valdez you talked to him in English?

A. If I could not explain myself in Spanish, I did not speak Spanish very well, I used English; he talks that better than I talk Spanish.

Q. When the document Exhibit K was signed by Valdez, did he asked you whether it contained the instructions he gave you for amending the first option?

294 A. He read the first option exactly as the second, except that he had me to cut out the figures.

Q. At the time you gave him the second option, with the amendment, did you tell him that you had made the amendment?

A. I have him the document and he said he was satisfied.

Q. Did you tell him that you had made the amendment?

A. He saw it. I didn't tell him because he saw it.

Q. Where did he sign that document.

Mr. Aitken: Objection, as immaterial.

Mr. Escaler: I withdraw the question.

Q. Why did you come to Mr. Prieto to inquire about the answer from Mr. Legarda?

A. Because when I made my offer and they told me they wished to notify Mr. Legarda, I certainly wanted to know if they had a reply to the cable, and they received the cable, and Mr. Prieto happened to meet me on the Escolta and he showed me a piece of paper, typewritten, that he told me was the cable received from Legarda.

Q. Has Dr. Valdez ever written to you concerning the negotiations?

A. I have not finished with the other question. Mr. Prieto told me was the cable received from Mr. Legarda, and which read: "Do not close option"——

Mr. Cohn: Object to the witness giving the contents of the cable.

295 The Court: Sustained.

Q. Have you not given Dr. Valdez, Mr. Borck, any memorandum concerning the conditions under which you wished to make an offer concerning the hacienda?

A. I made the conditions with the acceptance of the offer.

Q. Is it not true that you gave Dr. Valdez a piece of paper purporting to contain the conditions under which you wished to make an offer?

A. I don't remember giving him any paper except my acceptance.

Q. Have you ever received any letter from Dr. Valdez concerning the negotiations now in question?

Mr. Aitken: Objected to.

A. Not except that envelope.

The Court: He has already answered.

Witness excused.

Esteban Alovastro, being introduced as witness in behalf of the plaintiff, being duly sworn, testified as follows:

Direct examination.

By Mr. Beaumont:

Q. State your name.

A. Esteban Alovastro.

Q. Residence.

296 A. 157 Calle Isaac Peral, Manila.

Q. Occupation?

A. I am employed by Mr. Borck.

Q. How long have you been employed by him?

A. About two years.

Q. I show you this paper marked Exhibit D, and ask you to state when you first saw that, and where.

A. This, Mr. Borck sent me to take the letters to Dr. Valdez on

Calle San Sebastian, to his residence, and Dr. Valdez opened this and wrote on the envelope, and Dr. Valdez gave this to me and I brought this to Mr. Borck again.

Q. Who wrote the words on there?
A. Dr. Valdez.
Q. Where was he when he wrote it?
A. On Calle San Sebastian, in his residence.
Q. Did you see him write it?
A. Yes, sir.
Q. What was in that envelope?
A. A letter from Mr. Borck.
Q. Do you remember whether that was in English or Spanish?

Mr. Escaler: Objection, as incompetent and irrelevant.
Mr. Beaumont: I withdraw the question.

Q. Did you see the letter that was in the envelope?
A. I saw it.
Q. Was it in English or Spanish?
297 A. English.
Q. When Dr. Valdez received that, what did he do with the letter?
A. He read it.
Q. What did he do then?
A. He wrote on this envelope.
Q. What did he do with the envelope?
A. He gave it back to me.

Cross-examination.

By Mr. Cohn:

Q. What was the date when you took that letter to Mr. Valdez?
A. I don't remember the date but I think I remember the year, it was 1911.
Q. And what time of the day did you go to Dr. Valdez' house?
A. About 11 o'clock.
Q. How did you go into the house?
A. I took it from Mr. Borck's office and I went to Dr. Valdez' house.
Q. How did you get into the house?
A. I went inside to the house; he was in the intresuelo.
Q. How did you go inside?
A. Through the house.
Q You said that you went into the intresuelo?
A. Yes, sir.
Q. Did you find Dr. Valdez there in the intresuelo?
298 A. Yes sir, Dr. Valdez and his wife.
Q. They were both in the intresuelo?
A. Yes, sir.
Q. Whereabouts in the intresuelo?
A. I do not understand.
Q. In what part?

A Near the door.
Q. Were they in the room or in the entrance?
A. In the entrance.
Q. To whom did you give the letter that you took there?
A. I gave it to his wife, and she handed it to Dr. Valdez.
Q. In the same room?
A. Yes sir, they were seated at a table.
Q. At a table in the entrance?
A. Yes sir.
Q. How far from the entrance?
A. About a meter.
Q. On which side?
A. About the center of the entrance.
Q. The center of the entrance, about a meter from the door, there is a desk at which he was seated, and where he did this writing?
A. Yes sir.

Cross-examination.

By Mr. Escaler:

299 Q. How many letters have you delivered from Mr. Borck during the last five months, do you remember?
A I think about six.
Q. Do you remember which was the last letter?
A. I don't remember.
Q. You don't remember to whom it was delivered?
A. The last letter I delievered to Dr. Valdez, but he was not there in the house. He was in the hospital, and I did not get any answer.
Q. When this letter you gave to Dr. Valdez, enclosed in that envelope, was the envelope closed?
A. Yes sir, it was.
Q. It was closed?
A. Yes sir.
Q. And it was handed to you by Dr. Borck with the envelope already closed, was it not?
A. Yes sir.
A. And you never opened that letter before you delivered it to Dr. Valdez, did you?
A. No sir.
Q. And when it was delievered to Dr. Valdez, it was not delivered by you directly, but by his wife, is that not so?
A. Yes sir, but they were sitting on the table.
Q. Answer my question—Was it delivered to Dr. Valdez in person, or through his wife?
300 A. Through his wife.
Q. You did not come into the intresuelo, but you waited outside the door?
A. Yes sir.
Q. And the letter was taken to Dr. Valdez by his wife, and it was read by him in the presence of his wife?
A. Yes sir.

Q. And the place where the letter was taken by Dr. Valdez' wife quite far from the place where you waited?

A Well, not very far.

Q. What have you been doing while you waited at Dr. Valdez' door when you delivered the letter enclosed in the envelope exhibited to you?

A. I was just standing outside and waiting.

Q. You did not watch closely what Dr. Valdez was doing inside?

A. I saw him opening the envelope.

Q. The table was close to the place where you stood?

A. Not very far.

Q. The table you refer to was a writing desk, was it not?

A. I think it was.

Q. You saw Dr. Valdez in the act of writing?

A. Yes sir.

Q. That is all you could see from the place where you stood, was it, because the intresuelo was on a higher level than the place where you were?

301 A. Yes sir.

Q. You did not scrutinize everything that Dr. Valdez did with that letter?

A. I do not know that word "Scrutinize."

Q. Have you been watching closely what Dr. Valdez was doing with that letter?

A. Yes sir.

Q. You had been watching?

A. Yes sir.

Q. Had you any instructions to watch what he would do with the envelope you delivered to him?

(Question not answered.)

Q. Was it the first part of 1911 when you delivered that letter?

A. Yes sir.

Q. Was it about February, 1911?

A. I do not remember the month, but it was between December, 1910 and February, 1911, I don't quite remember, but it was 1911.

Q. Since when have you been in the service of Mr. Borck?

A. Since September, 1910.

Q. The envelope you delivered to Mr. Valdez was one of the first letters you delivered for Mr. Borck?

Mr. Beaumont: I think counsel is proceeding on an obvious error and is misleading the witness.

302 A. No sir, it was not the first.

Q. Did Dr. Valdez show you the letter contained in the envelope after it was delivered to him?

A. He did not show it to me.

By the Court: In what year was that?

A. 1911.

Q. That is, last year?

A. Yes sir.

Witness excused.

Mr. Beaumont: I will now offer in evidence this record which has not previously been offered, as Exhibit T, which is the record in Case No. 9954, and will also offer Exhibit R, which is the letter concerning which Judge Ross testified, and for which he is to send the original over here. I also offer in evidence all exhibits from A to T, inclusive.

Mr. Cohn: The defendant Legarda objects to the exhibits now offered on the ground that they are incompetent, immaterial and irrelevant. In addition, objects to the admission of Exhibits N, O, P, R, S, on the further ground that the matter therein contained has been excluded from inquiry on the ground of confidential communications, between attorney and client.

The Court: Ruling reserved.

303 Mr. Escaler: Defendant Valdez makes the same objections to the admission of this evidence.

The Court: Ruling reserved.

The plaintiff rests.

Proofs for the Defense.

ALEJANDRO ROCES, being introduced as a witness in behalf of the defendant Dr. Valdez, being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

Q. State your name.
A. Alejandro Roces.
Q. Residence?
A. No. 153 Calle Aviles.
Q. Occupation.
A. Land owner.
Q. Age?
A. 36.
Q. Do you know Dr. Valdez?
A. Yes sir.
Q. Do you know Mr. Borck?
A. Yes sir.

304 Q. Have you ever been at the consultation office of Dr. Valdez in this present year?

A. Yes sir.

Q. Were you present at any conversation between Dr. Valdez and Mr. Borck in the consultation room of Dr. Valdez?

A. Yes sir.

Q. How many times were you present at conversations held between Dr. Valdez and Mr. Borck?

A. Once.

Q. When was that?
A. I cannot fix the date, but I can state positively that it was in the month of January.
Q. Of what year?
A. This year.
Q. What conversation did you hear on that date?

Mr. Aitken: Objected to as incompetent and immaterial.
The Court: It will be admitted, subject to objection.

A. I could not say that I have heard the whole conversation; the only thing that I can say, that I was in the consultation room of Dr. Valdez to speak to him on a private matter, and as it was his hour for receiving patients, I had been waiting at a distance from where he was, talking to the patients, in order to wait until his consultations were finished. I was reading some papers when
305 I suddenly heard that Dr. Valdez and Mr. Borck were talking in loud voices.
Q. Now state the conversation.
A. In substance it was about a matter of four hundred thousand pesos to be paid in cash, and Mr. Borck stated that it was an impossibility, and I remember that Mr. Borck had said something about three hundred thousand pesos, and that in cash it would be difficult to find a purchaser, and I remember very well a phrase which was said at the time, which was this: This hacienda in the hands of the Filipinos would be useless. That is the part I heard of the conversation.

The Court:

Q. Who said that?
A. It was Mr. Borck who said the words that it would be of no value in the hands of the Filipinos.
Mr. Escaler: Do you know if Mr. Borck had said as to whether he was insisting on these negotiations with Dr. Valdez?

Mr. Aitken: Objected to as leading.
The Court: Sustained.

Q. About what part of the month of January did this conversation take place?
A. I could not fix the date exactly.
Q. Could you state if it was in the first or second fifteen
306 days of January, or not?
A. I believe it more likely to be the second or last fifteen days than the first.

Mr. Aitken: No *corss* examination. Move to strike the testimony of this witness as immaterial.
The Court: Ruling reserved. I will consider that in connection with the other motion.

Witness excused.

Dr. Fernando Calderon, being introduced as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

Q. State your name.
A. Fernando Calderon.
Q. Age?
A. 49.
Q. Occupation?
A. Doctor.
Q. Residence?
A. 1219 Arligue.
Q. Do you know Dr. Valdez?
A. Yes sir.
Q. Do you know Mr. Borck?
307 A. I do.
Q. Have you ever been in the consultation office of Dr. Valdez during these last two years?
A. Yes sir.
Q. Were you present at any conversation between Dr. Valdez and Mr. Borck referring to the Hacienda of Nagtahan?
A. Yes sir.
Q. How many times were you present?
A. Once.
Q. When was that?
A. The first part of December.
Q. Of what year?
A. 1911.
Q. What conversation referring to the hacienda of Nagtahan have you heard?

Mr. Aitken: Objected to as immaterial, irrelevant and incompetent.

The Court: Ruling reserved.

A. Dr. Borck presented a paper to Dr. Valdez and he told him to sign the paper, in which he, Dr. Valdez was giving an option for the purchase of the hacienda of Nagtahan in the amount of three hundred thousand pesos, payment in cash, upon the condition that Sr. Benito Legarda should approve this option. After this, Dr. Valdez signed the paper and he asked Mr. Borck to give him a copy
308 of the paper. After that Mr. Borck left and I got what I wanted from Dr. Valdez.
Q. About what part of the month of December of 1911 did that take place?
A. In the first part of December.
Q. Can you fix more or less the date?
A. Yes sir.
Q. When?

A. The 4th of December.
Q. Did you ever hear any conversation between Mr. Borck and Dr. Valdez referring to cablegrams?

Mr. Aitken: Objected to as leading.
The Court: Sustained.

Q. Was there any mention made in the conversation between Dr. Valdez and Sr. Borck as to how they were going to secure the approval of Sr. Valdez?

Mr. Aitken: Objected to as leading and also on the ground that the due execution was admitted.
The Court: Sustained.

Q. Was there anything else said in regard to this matter in the conversation at which you were present?
A. I have not heard anything else.

Mr. Aitken: No cross examination.

Witness excused.

309 Dr. BENITO VALDEZ, on- of the defendants, being introduced as a witness in his own behalf and on behalf of the defendant Benito Legarda, being duly sworn, testified as follows:

Direct examination.

By Mr. Cohn:

Q. State your name.
A. Benito Valdez.
Q. Age?
A. 52.
Q. Residence?
A. 964 Calle San Sebastian.
Q. Occupation?
A. Doctor.
Q. Have you ever received any offers for that Nagtahan Estate or for any part of it, or for any other real estate of Benito Legarda's, from persons other than the plaintiff Borck?
A. Yes sir, several of them.
Q. What action have you taken in regard to these offers *and megptoatopms.*
A. The same action I have taken in the case of Mr. Borck.
Q. What action was that?

Mr. Aitken: Objected to. We object to this line of examination as incompetent, irrelevant and immaterial, as an attempt to prove one act by proff of other independent acts.
310 The Court: Ruling reserved.
Mr. Cohn: I will amend the question.

Q. What action have you taken in all other negotiations prior to the 4th day of December, 1911.

Mr. Aitken: Sam- objection.

The Court: Ruling reserved, with right of objection.

A. I have always communicated with Mr. Legarda all the offers made to me.

Q. Did you take the same action with regard to negotiations with Mr. Borck, on occasions prior to December 4, 1911?

A. Yes sir.

Q. Have you ever made any agreement respecting the real property of Mr. Legarda with Mr. Borck, or with any person, prior to December 4, 1911, without the express approval and consent of Mr. Legarda, after consultation with him?

Mr. Aitken: Objected to as leading, irrelevant and immaterial.

The Court: Objection sustained.

Q. Is this your invariable practice, or have there been any exceptions to this rule?

Mr. Aitken: Same objection.

The Court: May answer.

Mr. Aitken: Exception.

311 A. It has always been my practice.

Q. Did you make an exception to this rule in the matter of the proposition brought to you by Mr. Borck on the 4th of December, 1911.

Mr. Aitken: Same objection.

The Court: May answer.

Mr. Aitken: Exception.

A. Yes sir.

Q. Please state what took place between Mr. Borck and yourself relative to his proposition of December 4, 1911.

Mr. Aitken: Object to the form of the question, as not being sufficiently concrete to show whether the conversation or negotiations referred to antedated or postdated*dated* the option of December 4.

The Court: Overruled.

Mr. Aitken: Exception.

A. Exclusively what took place on December 4, 1911?

Q. The question is not limited to what took place on the 4th of December, 1911; the question is general, to all the negotiations relative to the proposition made by Mr. Borck on the 4th of December, 1911.

A. Prior to that date Sr. Borck had come to visit me and talked to me several times about the purchase of the whole hacienda, having failed to purchase the first parcel which he attempted to pur-

312 chase. He made me several offers of one hundred and one hundred and eighty pesos, more or less, over the value of the

hacienda. Then I told him that I would communicate to Mr. Legarda these offers, and in reply to my letters to Mr. Legarda, Mr. Legarda wrote me a letter which, if I am not mistaken, has been offered in evidence when I testified in this case for the first time. This letter states, more or less, as follows:

Mr. Aitken: Object to the witness testifying as to the contents of the letter.

The Court: Sustained.

A. (continued). On account of having received that letter, one day Mr. Borck came to my consultation office and I told him that I have the reply of Mr. Legarda, but I did not show the letter to him. I told him that Mr. Legarda would not consider any offer which would not be better than the assessed value of the hacienda. Then about the 2nd day of December, more or less, Mr. Borck made a proposition to me. I believe that the letter must be there, I do not know. Then I told him that I will have again to consult with Mr. Legarda about this new proposition. Then Mr. Borck told me that a cable could be sent and that I could pay the cable fees, as he did not happen to have funds at that time. Then I was
313 trying to avoid this expense, because in case Mr. Legarda should not accept, I might have to pay this out of my own pocket. I told him then that I was going to write to him. Then Mr. Borck told me that the time that he had asked for was for one month, and if I was writing, the reply would not reply before that time. Then I told him that I was not opposed to giving him these three months' time in which to make the purchase. Then he told me "You give me an option." Then I told him to make it. "How is it going to be, in English or Spanish?" he asked me. I told him that it was immaterial to me, provided he causes the price to appear and the approval of Mr. Legarda. Then on the 4th of December, when I was in my consultation office with my patients, at the first opprotunity Mr. Borck approached me, bringing the paper to be signed. I asked him about the contents, and he told me that it was about our former conversation. On account of the great faith I had always had with Mr. Borck, whom I have considered as a good friend of mine, I signed the document, asking him at the same time to send offer to Mr. Legarda. Then he left and I did not see him again; this was the 4th of December until the middle or the end of December. Mr. Prieto told me that he had received a letter from Don Benito Legarda, in which he placed the hacienda at four hundred thousand pesos, with certain reservations.
314 This notice I communicated to Mr. Borck. One day, when I met him coming down from the Hotel de France, and he said "Mr. Legarda mucho loco" that it was not possible to secure this price for the hacienda. Subsequently brought me a paper of propositions—

Mr. Beaumont: Objected to.

Mr. Cohn:

Q. Where is that document?

A. That document is with Mr. Escaler, and he can testify about what he had ever done with it.

Mr. Beaumont: Our former objection still holds good?

The Court: Yes.

Mr. Cohn: Request that that part of the testimony with reference to the document be stricken.

Q. Have you had any instruction or authorization from Mr. Legarda to sell the hacienda for its assessed valuation?

Mr. Beaumont: Objected to.

Mr. Cohn: I will withdraw the question for the present.

Q. Were your instructions from Mr. Legarda relative to offers for the purchase of the Hacienda Nagtahan or any part thereof, given you by Mr. Legarda orally *on* in writing?

Mr. Beaumont: Objected to as immaterial.

315 The Court: May answer.

A. These instructions with regard to the disposal of his property were given to all of us, attorneys in fact.

Q. What were your instructions with reference to offers for the purchase of real estate?

Mr. Beaumont: Objected to also on the further ground that as this is an action for real estate, verbal instructions limiting powers of attorney could not be given in any case.

Mr. Cohn: I will withdraw the question.

Q. Did you ever state or represent to the plaintiff Borck that you had instructions from Legarda or authority from him to sell the hacienda Nagtahan for its assessed valuation?

Mr. Beaumont: Objected to as leading.

Mr. Cohn: I will withdraw the question.

Q. Have you heard the testimony of the plaintiff Borck respecting the statement made by you to him, concerning your instructions relative to the sale of the hacienda Nagtahan from Benito Legarda?

A. When?

Q. In his testimony this morning.

A. I have understood some words, but the general meaning of his testimony I did not understand, because it was not trans-

316 lated.

Q. The plaintiff in his own behalf testified that on the 4th day of December, 1911, or just prior to that date, you advised him that you had received a letter from Benito Legarda instructing you to sell the hacienda Nagtahan for its assessed valuation. Did you make such a statement to the plaintiff?

A. No sir, the only thing that I might have told Mr. Borck is the

meaning, the substantial meaning of the letter of Mr. Legarda, that he would not take into consideration any offer that would not cover the assessed value, from which I inferred that he was to make the sale so that Mr. Legarda could consider this matter.

Q. What representation, if any, was made to you by the plaintiff Borck on the 4th day of December, respecting the writing, Exhibit E, signed by you on that date, and in particular respecting the necessity of referring the offer therein contained to Mr. Legarda.

Mr. Beaumont: Objected to as leading.
The Court: Sustained.

Q. What did Mr. Borck tell you was the purport and object of this letter signed by you on December 4th?

Mr. Aitken: Objected to, on the ground that it assumes that Mr. Borck told him that.
The Court: Overruled.
Mr. Aitken: Exception.

317 A. Prior to that date when he asked for the option, he asked me for a document which would show his authority or authorization to purchase this property.

Q. What did he say respecting this particular document to which he procured your signature; did he say anything to you with reference to this paper which you had signed?

A. Yes sir; when he brought the document I asked him what it was, and he said "It is the option." "Is it under the same terms which I have stated respecting the price and authorization of Mr. Legarda" and after that we exchanged three or four words, and he left. I might add a little more, that is with regard to Mr. Borck's insistence on my signing the document. He pleaded with me in all kinds of words, because he said that he wanted to show that he had some kind of authority to sell this property. Then I remember that I still repeated to him that I was not authorized to sell the property. He then said "send a cable." Then he left and I did not send the cablegram, because I did not want to spend money, but I wrote.

Cross-examination.

By Mr. Beaumont:

Q. You have already produced all telegrams that you exchanged with reference to this case, have you not?

318 A. The imp-rtant ones, yes sir.

Q. There are others that relate to the transaction, are there?

A. No sir.

Witness excused.

JOSE E. ALEMANY, being introduced as a witness for the defendants, upon being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

Q. State your name.
A. Jose E. Alemany.
Q. Age.
A. 45.
Q. Occupation?
A. Doctor, merchant.
Q. Residence?
A. 167 old, 59 new number, Plaza del Carmen.
Q. Do you know Dr. Valdez?
A. Yes sir.
Q. Do you know Mr. Borck?
A. Yes sir.
Q. Have you ever been in the doctor's consultation office about the month of January of this year?
A. In January of this year, yes sir.
319 Q. Have you been present in any conversation between the doctor and Mr. Borck regarding the hacienda of Nagtahan?
A. Actually present, no sir, but I heard a small dispute, a discussion, between them.
Q. Do you remember the date on which you heard that?
A. Do you mean the day?
Q. The day and month.
A. The month was January, as I have stated.
Q. What year?
A. This year.
Q. And what day of the month of January?
A. About the 12th or the 15th. It is impossible to remember that exactly.
Q. What was that that you heard?

Mr. Beaumont: Objected to as immaterial, incompetent and irrelevant.
The Court: Ruling reserved, with right of exception.

A. What I heard was that Dr. Valdez was saying "It is not possible what you want"; that is to say, something like that; that is the substance. Mr. Borck stated that it was too dear, "I don't like it. I have no money."
Q. What did the doctor say to that, do you know?
A. I don't remember. Mr. Borck left while they were
320 talking, making motions and exclamations.
Q. Did you hear what Dr. Valdez had said on that occasion for Mr. Borck to say "mucho caro," etc.?

Mr. Beaumont: Objected to as leading.
The Court: May change the question.

Q. Do you remember anything that Dr. Valdez had said before you heard what Mr. Borck said?

A. If I heard something, it was a something that called my attention. It was something about four hundred thousand pesos.

Q. What had the doctor said about this four hundred thousand pesos?

Mr. Beaumont: Objected to as already answered.

Q. Do you know whether anything else was said with regard to the four hundred thousand pesos?

A. No sir, I only heard the amount of four hundred thousand pesos, the name of Mr. Legarda and the name of Mr. Borck and things to that effect. I was not actually present.

Mr. Aitken: Move to strike the testimony of this witness.

The Court: Ruling reserved, with right to exception.

Mr. Beaumont: No cross-examination.

Witness excused.

321 Mr. Escaler: I ask a continuation of this case.

The Court: Denied.

Mr. Escaler: Exception.

Dr. VALDEZ, being recalled to the stand as a witness in his own behalf, testified as follows:

Direct examination.

By Mr. Escaler:

Q Do you know who were present in your consultation office on the 4th of December, 1911, when you signed the documents in question?

Mr. Aitken: Objected to as immaterial.

The Court: May be received, subject to objection.

A. Several persons were there for consultation, but at the time that Mr. Borck was leaving I noticed Dr. Calderon there.

Q. You replied to a question of Mr. Cohn to the effect that you were going to send a cable to Mr. Legarda to inform him about these negotiations. Had Mr. Borck ever inquired from you whether you had received a reply?

Mr. Beaumont: Objected to. I do not thoroughly understand the status of this witness. He might have been cross-examined on this point when on the stand before.

A. Several times.

322 Q. Did Mr. Borck give you any instructions as to what you are to cable Mr. Legarda in regard to these negotiations now in question?

A. Instructions, no sir. He only wanted me to cable Mr. Legarda about these negotiations in order to find out whether Mr. Legarda would authorize them.

Q. I show you exhibit 101 of the defendant, and ask you if you ever received that letter and from whom?
A. That is a letter from Mr. Legarda.
Q. Directed to whom?
A. To me.
Q. Have you any instructions from Sr. Legarda with regard to the form of payment about the sale of the Nagtahan hacienda, or any part of it?

Mr. Aitken: Objected to as immaterial.
Mr. Beaumont: Also as incompetent, irrelevant and impertinent.
The Court: May answer.
Mr. Beaumont: Exception.
Mr. Aitken: Exception.

A. Yes sir, and he had required that in all cases it be cash, and Mr. Alemany is present here with whom I refused a transaction because of his unwillingness to pay cash.
Q. Did you ever communicate to Mr. Borck about these instructions that you had received from Mr. Legarda?
323 A. Yes sir.
Q. Did you make that communication before the 4th of December, 1911, or after that date?
A. This communication or indication rather, I made to him the first time that we made negotiations; that was the year 1910, and I repeated it to him in 1911, when he made an offer of purchase.
Q. About what property was the offer of Mr. Alemany?
A. About land upon which a house was erected, belonging to the minors of whom he was the administrator.

Mr. Aitken: Move to strike out the question and answer as collateral evidence.
The Court: Not having objected to the question, the answer may not be stricken. Motion denied.
Mr. Aitken: Exception.

Q. Have you ever had any conversation with Mr. Borck, about the latter part of January of this year, about the hacienda.

Mr. Aitken: Same objection.
The Court: Same ruling.

A. I have already stated that I had several conversations with Mr. Borck.
Q. Was Sr. Alejandro Rocess in your consultation office during the month of January of this year?
324 A. Yes sir.
Q. Has Sr. Roces ever been in your consultation office at any time during this year together with Mr. Borck?
A. I remember that one afternoon, when Mr. Borck had brought me a proposition, and making me an offer of payment by installments on the hacienda, we had a dispute on a question of words. After Mr. Borck had left, I saw that Mr. Rocess approached me.

Q. What was the dispute that you had on that occasion between Mr. Borck and yourself?

Mr. Aitken: Objection as immaterial.
The Court: Same ruling.

A. The discussion was that I was fully aware that his payment would be in cash, and he wanted to pay me in two installments, and as I had already written to Mr. Legarda about this matter, stating to him that the payment would be in cash, it rather annoyed me to notice the change that Mr. Borck wanted to make, as Mr. Legarda may think that I am unbusinesslike.

Q. Did Mr. Legarda ever give you any other price aside from that assessed value of the Nagtahan hacienda?

Mr. Beaumont: Objected to.
Mr. Escaler: I will withdraw the question.

Q. I show you now Exhibit 102, and ask whose signature
325 that is appearing on the same?

A. That is the signature of Don Benito Legarda.

Q. Please read the contents of that letter and state whether you have been informed of it in any way, if you have ever been informed of it.

Mr. Beaumont: Objected to as incompetent and irrelevant.
The Court: May answer.
Mr. Beaumont: Exception.

A. Yes sir, this is the letter which according to Mr. Prieto's information, set up the change of price made by Mr. Legarda.

Q. Have you ever informed Mr. Borck of the contents of that letter in any way?

A. Yes sir, of the contents of the letter.

Q. What did you notify Mr. Borck with regard to the contents of that letter?

A. Mr. Prieto had informed me that Don Benito Legarda required the price of four hundred thousand pesos, with certain reservations, for the hacienda. I informed him that.

Q. What did Mr. Borck tell you?

Mr. Beaumont: Objected to as immaterial.
The Court: May answer; ruling reserved.

A. He stated more or less that this price was a foolishness;
326 that it was almost impossible to sell this hacienda in the amount of three hundred thousand and some odd pesos; that for four hundred thousand pesos it would be a foolish thing to attempt to sell it, and that if he buys this hacienda it would mean another large amount in order to exploit it, and that such as the hacienda was it would not yield anything, and then he insisted that it be sold in that amount, for three hundred thousand and some odd pesos, that is the assessed value, as otherwise there would be no purchasers.

Q. In this letter, marked Exhibit 102 there appears the words "Mi querido Mauro"; who is that "Mauro"?

A. That is addressed to Don Mauro Prieto, the son in law of Mr. Benito Legarda, and he also had some powers of attorney from Mr. Legarda.

Q. Do you remember more or less when Mr. Prieto informed you about the contents of that letter?

A. About the 13th of December, during the first twelve days or in the beginning of the second twelve days of the month of December.

Cross-examination.

By Mr. Aitken:

Q. Was that after or before the signing of the option of December 4th?

A. The second twelve days of the month of December is after the fourth.

Witness excused.

327 JOSE ESCALER, attorney for plaintiff Valdez, being introduced as a witness for the defense, being duly sworn, testified as follows:

I wish to testify that I have received a letter from Dr. Valdez when he handed me the case against him and Mr. Legarda, which paper bore no date, and appears to be signed by Mr. Borck, from the correspondence exhibited here by Dr. Valdez and the signatures thereon appearing, and it purports to be the definite condition under which he wished to make an offer. It states something, in substance, like this: "The condition under which I wish to make my definite offer." The paper was burned in my office. That occurred in March or April of this year. It was typewritten. I called on Mr. Borck for it when he was on the stand, and he stated that he did not remember such a paper. It stated a price of something like three hundred and eight or three hundred and nine thousand pesos, and the time for payment twelve months, one half to be paid in six months and the other half to be paid within the next six months. That is all I wish to testify.

Cross-examination.

By Mr. Beaumont:

Q. When did you get that letter?

A. It was not a letter; it purported to be a sort of tentative agreement. I got it some time after the case was brought
328 here.

Q. Was it written on letterhead or plain paper.

A. Plain paper, legal size.

Q. Addressed to whom?

A. It bore no address, but it stated that the "definite condition

under which I wish to make my offer for the purchase of the Hacienda of Nagtajan, of Benito Legarda.

Q. When did you get that? At the time the case was instituted?

A. At the time you subpœn-ed Dr. Valdez ducus tecum to produce the papers.

Q. That was sometime in March?

A. I think it was in April.

Witness excused.

Mr. Escaler: I wish to offer the exhibits identified by the defendant at the taking of the deposition of Dr. Valdez.

Mr. Beaumont: Object to the admission of Exhibits 101 and 102, as we had a subpœna duces tecum to produce these documents, Furthermore, that they are immaterial, incompetent and irrelevant.

The Court: Decision reserved.

Mr. Cohn: I offer in evidence proceedings in Cause No. 9554, in particular I wish to offer in evidence Folio- 1, 2, 3, 4, 5, 6, 7,
329 8, and 9 of the record, and the supplementary schedule on Folios 16 and 17.

Mr. Escaler: We make the same offer.

Mr. Beaumont: We have no objection to that, but we wish to offer the rest of it.

At this juncture the case was continued until October 16th, at 8 o'clock A. M., at which time the hearing was proceeded with, the same appearances being noted.

ALFREDO CHICOTE, introduced as a witness for the defense, being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

Q. State your name.

A. Alfredo Chicote.

Q. Occupation?

A. Attorney.

Q. Residence?

A. 606 Calle Alix.

Q. Do you know Dr. Valdez?

A. Yes sir.

Q. Did you have any conversation with Dr. Valdez referring to the hacienda of Nagtahan, its purchase, or any other transaction?

Mr. Beaumont: Objection, as immaterial and incompetent.

Mr. Escaler: I wish to take an offer of proof by this witness that Dr. Valdez, about the month of December, 1911, received an
330 offer from Mr. Chicote, and he answered that he was unable to make any definite transaction with him, but required him to make a written offer, to be transmitted to Mr. Legarda, and I furthermore wish to show by this witness the minutes of the cor-

poration of which he is the president, stating the report that he has made about this transaction.

Mr. Beaumont: Objected to as incompetent, immaterial and irrelevant.

The Court: The objection is sustained for the reason that said offer does not purport to refer to anything that transpired between the parties in this case or to any transaction between these parties or to any matter at issue in this case, and for the further reason that if admitted, the effect would be to receive evidence of a self serving nature in behalf of the defendants, towit: acts and statements made by them or one of them in his own behalf.

Mr. Escaler: Exception.

Witness excused.

MANUEL E. CUYUGAN, a witness for the defense, being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

331 Q. State your name.
A. Manuel E. Cuyugan.
Q. Age.
A. 33.
Q. Occupation?
A. Merchant.
Q. Residence?
A. 130 Real, Ermita.
Q. Do you know Dr. Valdez?
A. Yes sir.
Q. Do you know Sr. Borck?
A. Yes sir, by sight.
Q. Have you ever been present at any conversation between Dr. Valdez and Mr. Borck?
A. Yes sir.
Q. When and where?
A. On one occasion at the Restaurant de France.
Q. When?
A. On one day of the month of December of last year.
Q. About what part of the month of December?
A. I cannot fix the exact date, but it was more or less about Christmas.
Q. What conversation was that you heard.

Mr. Aitken: Objected to *as* on the same grounds as previous testimony along the same lines.

The Court: May be received under the same conditions.

332 A. It was a question made by Mr. Borck to Dr. Valdez as to whether Dr. Valdez had received a reply about his offer for the hacienda.
Q. Reply from whom?

A. Dr. Valdez answered no, that he had not received any.
Q. (Question repeated.)
A. From Sr. Legarda.
Q. Did you hear what had been asked to Mr. Legarda or what reply they were expecting from him?
A. A reply about an offer by cable that Sr. Valdez had sent to Mr. Legarda.
Q. Do you know to what the offer was about—to what property?
A. About the Nagtahan Hacienda.

Mr. Escaler: That is all.
Mr. Beaumont: No cross.

Witness excused.

MAURO PRIETO, being introduced as a witness for the defense, upon being duly sworn, testified as follows:

Direct examination.

By Mr. Escaler:

Q. State your name.
A. Mauro Prieto.
Q. Age?
A. 39.
Q. Occupation?
333 A. Merchant.
Q. Residence?
A. 964 Calle San Sebastian.
Q. Do you know Don Benito Legarda?
A. Yes sir.
Q. Are you one of the attorneys in fact of Mr. Legarda?
A. Yes sir.
Q. Do you have power of attorney to sell property of Mr. Legarda?
A. Yes sir.
Q. Did you have any instructions from Sr. Legarda regarding the disposal or sale of his property?

Mr. Aitken: Objected to as immaterial.
Mr. Escaler: I withdraw the question.

Q. Do you know whether Sr. Legarda gave instructions to all his attorneys in fact?

Mr. Aitken: Objected to.
The Court: Overruled.
Mr. Aitken: Exception.

A. Yes sir.
Q. Who are the attorneys in fact of Mr. Legarda?
A. His son, Don Benito de Legarda de la Paz, Dr. Valdez and myself.
Q. In what form were those instructions given?
334 A. Mr. Legarda gave us verbal instructions.

Q. Did he give these instructions to all three of them jointly or only to some of them?

Mr. Beaumont: Objected to as immaterial. Moreover, this is an action regarding sale of real estate. It is alleged that the power was given by a written instrument, which is admitted in evidence, so this is an effort to vary the terms of that instrument by oral testimony, which we cannot contradict.

The Court: May be admitted, subject to objection.

A. To the three jointly.

Q. What were these instructions.

Mr. Beaumont: Same objection.

The Court: Same ruling.

A. The instructions given by Mr. Legarda to his three attorneys in fact were verbal, and that no one of his attorneys in fact could dispose of any of his property, in spite of the ample powers given us, without previously consulting him.

Q. When were these instructions given you?

A. Before his departure from Manila.

Q. In what year?

A. I believe it was in 1910 or 1911.

Q. Did anything take place subsequently between yourself
335 and Mr. Legarda affecting or modifying those instructions?

Mr. Beaumont: Object to the form of the question.

Mr. Escaler: I withdraw the question.

Q. Have you had any conversation with Mr. Borck regarding the Hacienda Nagtahan, about the last of this year?

A. Yes sir.

Q. What conversation did you have with Mr. Borck?

Mr. Beaumont: Objected to.

Mr. Escaler: I withdraw the question.

Q. When did that conversation take place?

A. I remember having met Mr. Borck twice.

Q. When was the first time?

A. The first time was between the first and the second week in December of last year.

Q. What did Mr. Borck tell you on the first occasion that he went to talk to you about the Nagtahan hacienda?

Mr. Aitken: Objected to as immaterial.

The Court: Overruled.

Mr. Aitken: Exception.

A. Mr. Borck came to my office and he asked me if I had received a cable from Mr. Legarda in reply to the offer made by him for the hacienda of Nagtahan. I answered him that I had
336 not received any cable, any reply cable from Mr. Legarda. Then Mr. Borck told me that it was a difficulty for him in

these instructions of Mr. Legarda, because he was not able to make a sale of these properties in the proper time.

Q. What else; was anything else said?

A. He told me besides that if I could obtain that Mr. Legarda should cancel these private instructions about his property, and the property could be sold to him he would give me a commission for that.

Q. What did you say to that?

A. I rejected, of course, his offer about commission, and I told him that I could not go contrary to those instructions.

Q. When was the second conversation you had with Mr. Borck in regard to the Nagtahan Hacienda?

A. The second time was in the Restaurant de France. While coming down from the hotel, in a meeting that we had there, Mr. Valdez, Mr. Cuyugan and myself, and we met Mr. Borck on the stairway.

Q. When was that second conversation?

A. This took place sometime before Christmas.

Q. What did Mr. Borck say and to whom did he talk on that occasion?

A. Mr. Borck addressed himself to Dr. Valdez, and asked him if he had received a reply from Mr. Legarda "in regard to my
337 offer concerning the hacienda de Nagtahan." The doctor answered No.

Q. Do you know whether on those two occasions that those two conversations took place, whether they referred to the hacienda of Nagtahan as a whole, or only to a part of it?

A. I believe as a whole.

Q. Showing you Exhibit 102, I will ask if you know it, and if so state what it is.

A. Yes sir.

Q. Whose is that letter and to whom is it addressed?

A. This letter is from Mr. Legarda, addressed to me personally.

Q. Did you have any conversation with Dr. Valdez regarding this letter?

Mr. Beaumont: Objected to as immaterial, and furthermore the Exhibit itself is under objection.

The Court: Sustained.

Q. Did you communicate with Dr. Valdez the contents of that letter?

Mr. Aitken: Objected to.

The Court: Sustained.

Mr. Escaler: Exception.

Witness excused.

Defense rests.

338 *Proofs for the Plaintiff in Rebuttal.*

Mr. BORCK, recalled as a witness for the plaintiff, in rebuttal, testified as follows:

Direct examination.

By Mr. Beaumont:

Q. You heard the testimony of Mr. Escaler in regard to a paper sent by yourself and relating to a purchase of the Hacienda Nagtahan in installments?

A. I don't exactly know——

Q. The question is, did you hear that testimony?

A. I heard it, but I do not exactly remember it.

Q. Subsequent to December 4th, did you make any offer for the hacienda payable in installments?

A. For two hundred thousand pesos, yes sir, that was not in December, that was in August, 1911.

Q. Subsequent to December 4th, did you make such offer?

A. No sir.

Q. Did you sign any document? I show you this paper which may be marked Exhibit T.

A. This was forwarded to Mr. Legarda on account of this offer. When it was forwarded, Dr. Valdez told me that he would send this directly, my own offer, my own letter to Mr. Legarda, and he would insist on his giving him the lowest price.

Q. Can you state whether that is the document to which Mr.
339 Esclaer refers?

A. I don't know, but that is the only written offer I ever made.

Cross-examination.

By Mr. Escaler:

Q. Have you ever made any offer above three hundred thousand pesos before January of this year?

A. I never made an offer above three hundred thousand pesos before; I made the first offer when I had this last option for three hundred and seven thousand pesos which I believe was on January 19th. I never made an offer before on account of this option.

Q. Your former offer concerning part of the hacienda was to be paid in cash?

A. The former offer?

Q. For part of the hacienda, for about three hundred thousand meters.

A. The offer I made in January, on the 23rd I believe it was, was a cash offer.

Q. I mean to say the former offer you have made, before the one you made in January of this year, relating to part of the Nagtahan

hacienda, for about three hundred thousand square meters; was it cash?

Mr. Aitken: Objected to as the document itself is the best evidence.

A. I think it was a cash offer, but I do not remember it
340 now. The letter is here.

Witness excused.

Plaintiff in rebuttal rests.

Mr. Aitken: We wish ten days for preparing brief.
Mr. Cohn: And we wish ten days after the filing of plaintiff's brief.

Case closed.

I certify that the foregoing pages 22 (24) to 98 (114) inclusive are true and correct transcript of my stenographic notes taken at the hearing of said cause.

(Sgd.) T. WINFRED PARKIN,
Official Reporter.

Manila, P. I., October 24, 1912.

341 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Proceedings in the Supreme Court of the Philippine Islands.

On 11th day of June, 1913, the case was duly docketed in the Office of the Clerk, bearing General Register No. 8988.

On June 20, 1913, the bill of exceptions presented by the defendant Benito Legarda was printed and filed.

Thereafter and on the 23rd day of July, 1913, the defendant Benito Valdes, by his attorneys, filed the following motion:

342 R. G. No. 8988.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

Civil Cause No. 9436.

W. BORCK, Plaintiff,

versus

BENITO LEGARDA and BENITO VALDES, Defendants.

Motion.

The undersigned, attorneys for the defendant Benito Valdes, have the honor to file the attached translation of the decisions rendered in the above-entitled cause, so as to be annexed to, and form part of, the Bill of Exceptions filed by the undersigned, in accordance with an order issued by the Court of First Instance of Manila.

Manila, July 22, 1913.

ESCALER & SALAS,
(Sgd.) By PERFECTO SALAS,
Attorneys for the Defendant Dr. Benito Valdes.

145 Plaza Santa Cruz, Manila.

(Here follows transcription in Spanish of the decision rendered by the court below.)

343 The Supreme Court, in its session of July 24, 1913, resolved that the Spanish translation of the decision rendered by the court below be attached to the record of the case.

On September 2, 1913, the bill of exceptions presented by the defendant Benito Valdes was printed and filed.

Thereafter, to wit, on the 4th day of September, 1913, the appellant Benito Legarda, through his attorneys filed his brief in the Supreme Court, accompanied by the following assignment of errors:

I.

The Court erred in overruling the demurrer of defendant Legarda to the complaint.

II.

The Court erred in failing to hold that the complaint does not state a cause of action as against the defendant Legarda.

III.

The Court erred in admitting evidence, over the objections of defendant Legarda, in support of a contract of the said defendant and in support of a breach of the same, neither of which are alleged in the complaint.

344

IV.

The Court erred in finding that Benito Valdez was the agent of Benito Legarda with authority to contract for the latter respecting the sale of real property.

V.

The Court erred in considering as evidence, and in basing a finding upon the document known and designated as Exhibit "A" of the complaint which was never offered nor admitted into evidence.

VI.

The Court erred in admitting as evidence of an obligation of defendant Legarda the document "Exhibit E."

VII.

The Court erred in holding that parole evidence was admissible to show that the writing "Exhibit E" was an offer by the defendant Legarda.

VIII.

The Court erred in holding that although evidence were admissible to show that "Exhibit E" was intended to be the offer of defendant Legarda, that there must be excluded evidence to show that it was not intended to be an offer by Legarda unless first submitted to the latter and approved by him.

345

IX.

The Court erred in holding that, as far as concerns the defendant Legarda, the alleged offer was not barred by the Statute of Frauds (Sec. 335, C. C. P.).

X.

The Court erred in holding that the evidence establishes that the document "Exhibit E" constitutes an offer of defendant Legarda.

XI.

The Court erred in its attempt to exclude "Exhibit F" from evidence by a ruling made for the first time in the order denying a motion for a new trial.

XII.

The Court erred in its attempt to exclude "Exhibit F" from evidence by the sustaining of an objection thereto that had never been made.

XIII.

The Court erred in holding that "Exhibit F" was not a counter-offer by Borck but an independent proposal.

XIV.

The Court erred in holding that "Exhibit F" did not, as a counter-offer of Borck, reject and revoke the alleged offer Exhibit E.

346

XV.

The Court erred in holding that "Exhibit E," as an offer, was not an offer of sale for cash.

XVI.

The Court erred in holding that "Exhibit E," as an offer, was an offer to accept payment of the piece therein stated, at any time after acceptance up to the expiration of the time allotted for acceptance.

XVII.

The Court erred in holding that "Exhibits G and J," or either of them, were or are valid acceptances of the offer set forth in "Exhibit E."

XVIII.

The Court erred in holding that "Exhibits G and J," were not counter-proposals, varying in terms from those of "Exhibit E."

XIX.

The Court erred in holding that "Exhibits G and J" were absolute and unconditional acceptances of the offer set forth in "Exhibit E."

XX.

The Court erred in holding that the provisos of "Exhibits G and J" were mere requirements for the conveyance of good title.

347 XXI.

The Court erred in holding that there has been a breach of the alleged contract by the defendant Legarda.

XXII.

The Court erred in holding that the plaintiff has made tender of performance of his obligations under the alleged contract.

XXIII.

The Court erred in holding that "Exhibits G, J and K," or either or any of them, was a valid tender under Article 347, C. C. P.

XXIV.

The Court erred in holding that its decree for damages, although awarded as an alternative remedy, is obiter dicta.

XXV.

The Court erred in holding that the sum of ₱380,000 was, or is, the established market value of the land in controversy.

XXVI.

The Court erred in holding that the alleged offer of Bruce, Lawrence, Ross & Block was conclusive, or competent evidence of the market value of the land in controversy.

348 XXVII.

The Court erred in finding that the firm of Bruce, Lawrence, Ross & Block undertook to pay plaintiff ₱380,000 cash for the land in controversy.

XXVIII.

The Court erred in finding that the firm of Bruce, Lawrence, Ross & Block had the ability to pay ₱380,000 for the land in controversy.

XXIX.

The Court erred in refusing to strike out the testimony of the witness Jas. Ross relative to the alleged offer of ₱380,000 on the ground that said witness had refused to be cross examined relative to said offer because of professional privilege.

XXX.

The Court erred in holding that Borck was damaged or suffered loss by reason of the failure of the defendant Legarda to perform the alleged contract of purchase and sale.

XXXI.

The Court erred in failing to hold that the alleged loss of profits on the part of Borck, if any, was wholly due to the inability of Borck to purchase the property in order to resell the same.

349 XXXII.

The Court erred in rendering judgment in favor of the plaintiff herein.

XXXIII.

The Court erred in refusing to render judgment herein in favor of defendant Legarda, dismissing the complaint as to said defendant with his costs of suit.

XXXIV.

The Court erred in overruling and denying the motion of defendant Legarda for a new trial herein.

On the 5th day of November, 1913, counsel for both parties in this case filed a stipulation whereby the defendant and appellant Benito Valdes should have 20 days' extension, from the date of said agreement, within which to file his brief; and the Supreme Court, in its session of November 6, 1913, duly approved the said stipulation.

Thereafter, to wit, on the 20th day of November, 1913, the appellant Benito Valdes, through his attorneys, filed his brief, accompanied by the following assignment of errors:

350 I.

The Court erred in overruling the demurrer of the defendant Valdes based upon the ground that the complaint did allege any cause of action against said defendant.

II.

The Court erred in adjudging that defendant Valdes had voluntarily granted the option at bar (page 60, Bill of Exceptions) instead of declaring that same had been obtained through fraud.

III.

The Court erred in not declaring that the option in question was an offer subject to the approval of defendant Legarda.

IV.

The Court erred in adjudging that the document Exhibit E was an option contract and that it was not an offer to sell.

V.

The Court erred in adjudging that the offer in question had been withdrawn before it had been accepted.

VI.

The Court erred in holding that the offer or the option in question could still be accepted in view of the Exhibit G, when as a
351 matter of fact the option in question, by having been repudiated, had become completely void.

VII.

The Court erred in holding that by Exhibit E the plaintiff was given until March 4, 1912, in which to make payment, and that Exhibit G, providing payment before the above-mentioned date, did not modify nor change the terms of the option (p. 56).

VIII.

The Court erred in holding that Exhibit G, which called for the documents being placed at the disposal of the plaintiff for his inspection, did not amount to a modification of the offer or that it was not a counter-offer.

IX.

The Court erred in holding that the offer contained in Exhibit E could have been accepted by Exhibit J, when the Court should have adjudged that said offer had been in point of fact annulled on account of it not having been accepted neither by the Exhibit F nor by the Exhibit G both of which manifestly contained a counter-offer.

X.

The Court erred in holding that a contract of sale had been entered into without the defendant having accepted the counter-offers of the plaintiff contained in the Exhibits G and J.

352 XI.

The Court erred in sentencing the defendant Valdes to execute the contract in question without it having been proved that he was still the attorney-in-fact of his codefendant Legarda.

Thereafter and on the 20th day of August, 1914, counsel for defendant and appellant Benito Legarda filed the following motion:

353 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,
versus
BENITO VALDEZ et al., Defendants and Appellants.

Now comes Benito Legarda, defendant and appellant in the above-entitled case, and respectfully petitioning this Honorable Court, shows that the bill of exceptions of said appellant was received by the respective parties hereto on or about the 21st day of June, 1913; that the brief of appellant herein was duly served and filed on the 4th day of September, 1913; and that the appellee has wholly failed and omitted to serve or file his brief on appeal, notwithstanding the excessive lapse of the period of time prescribed therefor by law.

Wherefore, appellant moves that the above entitled appeal be declared submitted and taken under advisement for decision by this Honorable Court without further delay.

Respectfully submitted,
HAUSSERMANN, COHN & FISHER,
(Sgd.) PP. CHARLES C. COHN,
Attorneys for Appellant.

354 To Hartford Beaumont, Plaintiff and Appellee, and to the Attorneys for said Plaintiff:

You will please take notice that on Monday, the 31st day of August, 1914, at the hour of 9:00 a. m. of the said day, the appellant, Benito Legarda, will move this Honorable Court, at the Court room thereof in this City of Manila, in accordance with the terms of the foregoing motion.

Manila, August 20, 1914.
HAUSSERMAN, COHN & FISHER,
(Sgd.) PP. CHARLES C. COHN.
Attorneys for Appellant.

Copy rec'd 8/20/14.
(Sgd.) BEAUMONT & TENNEY,
Attorneys for Plaintiff.

The Supreme Court, in its session of August 21, 1914, considering the foregoing motion, ordered that the case be included in the September calendar.

355 Thereafter and on the 24th day of August, 1914, counsel for plaintiff and appellee filed his brief.

Thereafter and on the 6th day of October, 1915, the attorneys for plaintiff and appellee filed the following motion:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

BENITO VALDEZ et al., Defendants and Appellants.

Motion.

Now comes the plaintiff and appellee in the above-entitled case and states that Benito Legarda, the principal defendant in this case, is dead, and that Mauro Prieto, Benito Legarda, Jr., and
356 Benito Valdez have been appointed joint Administrators of his estate.

Wherefore plaintiff prays that the name of said Administrators be substituted in place of the named of the said defendant deceased.

Manila, P. I., October 4, 1915.

(Sgd.) BEAUMONT & TENNEY,
Attorneys for Plaintiff and Appellee.

Notification.

Messrs. Gilbert, Haussermann, Cohn & Fisher, Attorneys for defendant Benito Legarda.

Messrs. Escaler & Salas, and Singson, Ledesma & Lim, Attorneys for defendant Benito Valdez.

GENTLEMEN: You are hereby notified that on Monday, October 11, 1915, at 9:00 a. m. of the said day, the plaintiff and appellee, W. Borck, will move this Honorable Court at the Court room
357 thereof in this City of Manila, in accordance with the terms of the foregoing motion.

Manila, P. I., October 4, 1915.

(Sgd.) BEAUMONT & TENNEY,
Attorneys for Plaintiff and Appellee.

Received copy, October 5, 1915.

GILBERT, COHN & FISHER,

(Sgd.) Pp. F. C. FISHER,

Attorneys for Defendant Benito Legarda.

Received copy, October 6, 1915.

PERFECTO SALAS RODRÍGUEZ,

(Sgd.) By ELÍAS CANAPY,

Attorney for Defendant Benito Valdez.

The foregoing motion for the substitution of defendants in this case was allowed by the Supreme Court in its session of October 11, 1915.

358 On the 8th day of September, 1914, the case was submitted to the Supreme Court for decision on the merits, and on the 30th day of March, 1916, the Supreme Court of the Philippine Islands rendered its decision, which said decision is in the words and figures following, to wit:

(Heading and Title Omitted.)

Decision.

ARAULLO, *J.:*

After transactions had, prior to December 4, 1911, between W. Borck and Benito Valdez relative to the purchase and sale, first, of a part of the Nagtahan Hacienda, situated in the district of Sampaloc of this city of Manila and belonging to Benito Legarda, and later, of the entire hacienda, the said Benito Valdes, on the date above mentioned, addressed to the said Borck the following letter (Exhibit E):

Manila, December 4, 1911.

Mr. W. Borck, Real Estate Agent, Manila, P. I.

SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan Hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed government valuation.

B. VALDES.

359 Subsequent to the said date, W. Borck addressed to Benito Valdes several letters relative to the said purchase and sale of the hacienda, and as he did not obtain what he expected, or believed he was entitled to from Valdes he filed the complaint that originated these proceedings, which was amended on the 10th of the following month, April, by bringing his action, not only against Benito Valdes but also against the Benito Legarda referred to in the letter above transcribed.

In said amended complaint it is alleged that the defendant Benito Legarda was the owner in fee simple of the Nagtajan Hacienda, and that Benito Valdes was his attorney in fact and had acted as such on the occasions fererred to in the complaint by virtue of a power of attorney duly executed under notarial seal and presented in the office of the register of deeds, a copy of which, marked as Exhibit A, was attached to the complaint; that on or about December 4, 1911, the defendant Benito Valdes gave to the plaintiff the document written and signed by him, Valdes, transcribed at the beginning of this decision, to wit, the letter aforementioned, which document is inserted in the amendment to the complaint; that on January 19, 1912, and while the offer or option mentioned in said document still stood, the plaintiff in writing accepted the terms of said offer and requested of the said Valdes to be allowed to inspect the property titles and other documents pertaining to the property, and offered to pay to the defendant, immediately and in cash as soon as a reasonable examination could be made of said property titles and other documents, the price stipulated in the contract for said hacienda which is also described in the complaint and mention is therein made of its value and of the revenue annually obtainable therefrom; that, in spite of the frequent demands made by the plaintiff, the defendants had persistently refused to deliver to him the property titles and other documents relative to said property and to execute any instrument whatever of conveyance thereof in his behalf; that the plaintiff, on account of said refusal on the part of the defendant Valdes, based on instructions from the defendant Legarda, had suffered damages in the amount of ₱760,000, and, by the tardiness, failure and refusal of the defendant to comply with his obligation, the plaintiff had incurred great expense and suffered great losses, whereby he was prejudiced in the amount of ₱80,000; that the plaintiff was, and had been on all occasions, willing to comply with the obligation imposed upon him to pay to the defendants the full and stipulated price. The plaintiff concluded by praying: (1) That the defendant Valdes be ordered to execute the necessary formal document as proof of the contract or obligation before referred to, and to incorporate the same in a public instrument and that the defendant Legarda be ordered to convey in absolute sale to the plaintiff, either directly or through the defendant Valdes, by a proper deed, the said Nagtajan Hacienda, described in the complaint; (2) that both defendants and each of them be ordered and required to render an account to the plaintiff of such rents and profits as they may have collected from the said property from the 19th of January, 1912, until the date of the execution of the judgment that be rendered in these proceedings, together with legal interest on the amounts thereof; (3) that, in case it be shown that specific performance of the contract is impossible, the defendants shall pay to the plaintiff damages in the sum of ₱760,000; and, finally, that the plaintiff have and recover the interests and costs in these proceedings.

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To this complaint, before it had been amended, the defendant Valdes filed a demurrer, on the grounds that there was a misjoinder

of parties on account of the erroneous inclusion therein of the defendant Valdes, that the complaint did not set forth facts that constituted a cause of action against said defendant, and that it was ambiguous, unintelligible and vague. This demurrer was over ruled on April 11, 1912.

The defendant Benito Legarda also interposed a demurrer to the amended complaint on the grounds that the facts therein set forth did not constitute a right of action against this defendant. This demurrer was likewise overruled on June 26, 1912.

On the 22nd of the same month of June, the court, ruling on a petition made in voluntary insolvency proceedings brought on May 10, 1912, by the plaintiff W. Borck, and in view of the agreement entered into in said proceedings by all of the latter's creditors, ordered

that the plaintiff Borck be substituted in the instant proceed-
362 ings by Hartford Beaumont, as the trustee appointed therein and representative of the said plaintiff's creditors, the assignees of his rights, in connection with said proceedings.

The defendant Benito Valdez, in answer to the complaint as amended, denied each and all of the allegations thereof from paragraph 4 of the same, except those which he said that he admitted in the special defense contained in said answer, in which he alleged: (1) That the option given by him to the plaintiff was an option without consideration and subject to the approval of the defendant Legarda; (2) that, as the defendant Legarda had not approved the said option, it had no value whatever, according to the understanding and agreement between himself and the plaintiff; (3) that the option offered by him to the plaintiff had not been accepted by the latter within a reasonable period of time, nor had he accepted it during the time it was in force, in accordance with the conditions agreed upon between the parties; (4) that he signed the letter of December 4, in which he tendered to the plaintiff the option which had given rise to this suit, through deceit employed by the plaintiff with respect to its contents, for the plaintiff had stated to him that it was written in accordance with what had been agreed upon by both parties, without which statement on the part of the plaintiff he would not have signed it; (5) that the plaintiff, on and prior to January 19, 1912, was insolvent, and was so even then, and never had proven his solvency nor had offered to pay the price in cash,

as he had agreed to do; and, (6) that he, Valdes, was merely
363 a general attorney in fact of the defendant Benito Legarda and had no interest whatever in the subject-matter of the suit, nor in the litigation, and in all his acts had carried out the instructions of the said Legarda. He finally prayed that the complaint be dismissed with the costs against the plaintiff.

The defendant Benito Legarda, answering in turn the complaint, denied each and all of the allegations thereof, from paragraph 3 of the same onward, except such as he expressly admitted and were contained in the special defense inserted in said answer, in which he alleged: (1) That his codefendant Benito Valdes, through his attorney in fact, had instructions not to give any option on the hacienda in question without Legarda's previous knowledge and

consent; (2) that on and before December 4, 1911, the plaintiff had knowledge of the scope and limitations of the powers conferred upon the defendant Valdes; (3) that the latter gave the option, alleged by the plaintiff, without his (Legarda's) knowledge or consent, thus violating the instructions he had given to the said Valdes; (4) that he had disapproved and rejected the option in question as soon as he had learned of it; (5) that he had been informed, and therefore alleged as true, that the option said to have been executed in behalf of the plaintiff had been obtained by the latter by a false and malicious interpretation of the letter of December 4, 1911, and that the plaintiff, availing himself of such interpretation, induced the defendant Valdes to sign the said option; (6) that the option
364 said to have been tendered to the plaintiff had not been legally accepted; and, (7), that on and subsequent to January 19, 1912, the date on which, according to the plaintiff, a tender of payment of the price of the Nagtajan Hacienda, in accordance with its assessed value, was made to his codefendant Valdes, as well as on the date of the answer, the plaintiff was insolvent.

After the hearing, in which the respective parties presented their evidence, the Court of First Instance of this city of Manila, on February 12, 1912, rendered judgment in which he found: (1) That the instrument E, (that is, the letter of December 4, 1911, transcribed at the beginning of this decision), as supported by Exhibit A (the power of attorney, a copy of which accompanied the complaint) and confirmed by Exhibit G (the letter of January 19, 1912, addressed by the plaintiff Borck to the defendant Valdes, presented in evidence at the trial and of which mention will be made elsewhere herein) constituted a contract by which the principal defendant undertook to convey to the plaintiff the property therein described; (2) that the plaintiff made a sufficient tender of performance, on his part, of the contract, in accordance with section 347 of the Code of Civil Procedure; (3) that the defendants had failed to execute such conveyance in accordance with said contract, and that the plaintiff was entitled to the specific performance thereof, and to the net income, if any, obtained therefrom since January 19, 1912, but that he had not shown sufficient loss otherwise to entitle him
365 to additional damage unless it subsequently should appear that a conveyance could not be made. The court accordingly decreed: (1) That upon the payment by the plaintiff to the principal defendant, Benito Legarda, or to the clerk of the court, of the sum of ₱307,000, the said defendant, or his codefendant and attorney in fact, should execute and deliver to the plaintiff good and sufficient conveyance, free of all incumbrance, of the property described in Exhibits B and C, attached to the plaintiff's complaint, so far as the same was included within the terms of Exhibit G; (2) that upon the said defendants' failure to execute such conveyance within a reasonable time after such payment, the clerk of the court should execute one, and the same, together with the decree, should constitute a true conveyance; (3) that if for any sufficient reason such conveyance could not then be made, the plaintiff should have and recover from the defendant Legarda, as alternative damages, the sum of

₱73,000, with interest thereon at six per cent per annum from March 13, 1912; and (4) that the defendants should render an accounting, within thirty days, of the income and profits derived from said property since January 19, 1912, and pay the costs of the proceedings.

The parties being notified of this judgment, the defendants Benito Legarda and Benito Valdes excepted thereto and at the same time prayed that it be set aside and that they be granted a new trial on the grounds that the judgment was not sufficiently supported by the evidence and was contrary to law, and that the findings of fact
366 therein contained were manifestly and openly contrary to the weight of the evidence. Their prayer having been denied, a ruling to which they also excepted, they have brought these proceedings on appeal to the Supreme Court by the proper bill of exceptions, and have specified in their respective briefs several errors which they allege the lower court committed. Some of these errors consist in that the trial judge overruled the demurrer filed to the complaint; others, in that he admitted certain evidence and excluded other, this being the alleged cause of the erroneous value assigned to the instrument Exhibit E and of the rights and obligations derived from the said document, both with respect to the plaintiff and the two defendants; and still others, in the various statements made in the judgment, as a result of those findings and on which the conclusions arrived at in the said judgment have been founded.

The defendant Benito Legarda also alleged among the said errors, as especially affecting his rights, that the court held that Benito Valdes was his agent, empowered to execute contracts in his (Legarda's) name in respect to real property; that the court admitted in evidence the document Exhibit A, introduced by the plaintiff, to wit, the copy of the power of attorney attached to the complaint, which never was offered as such; and that he based one of his findings thereon.

The defendant Benito Valdes specified, also in special reference to himself, other errors consisting in the court's having held that this defendant voluntarily executed the option in question, in-
367 stead of holding that it was obtained by fraud; and likewise in holding that the document Exhibit E was a contract of option and not an offer to sell, and in not holding that said option was an offer subject to the approval of the defendant Legarda.

Inasmuch as it does not appear from the bill of exceptions that the defendants recorded the exceptions to the overruling of the demurrer respectively filed to the complaint by both defendants, the assignment of error relative to the said ruling cannot be taken into consideration by this Supreme Court.

The plaintiff's action is based on the failure of the defendant Valdes, as the agent or attorney in fact of the other defendant Benito Legarda, to perform the obligation contracted by the said Benito Valdes to sell to the plaintiff the property belonging to the said Legarda, mentioned in the letter of December 4, 1911, (Exhibit E) within the period and for the price specified therein; and the object or purpose of these proceedings is to require fulfilment of the said

obligation and to secure the payment of a proper indemnity for damages to the plaintiff, for its not having been duly and timely complied with.

Inasmuch as it was set forth in the said document Exhibit E that the property known as the Nagtajan Hacienda, (an option to buy which was given by the defendant Valdes to the plaintiff Borck,) belonged to Benito Legarda; as negotiations had been under-
368 taken prior to the execution of the said document, between the plaintiff Borck and the defendant Valdes with respect to the matters set forth in that document, by virtue of which negotiations Borck knew that Valdes was Legarda's agent or attorney in fact, although it appears in said instrument that the agent Valdes acted in his own name; and, further, as the plaintiff in the complaint made the necessary allegations to explain the relations that existed between the principal Legarda and the agent Valdes with regard to the said document Exhibit E and the failure, alleged by the plaintiff, to fulfill the stipulations therein contained; therefore, the facts alleged in the complaint did constitute a right of action against the defendants, each and both of them, and the lower court did not err in so holding, for, though the person who contracts with an agent has no action against the principal, pursuant to article 1717 of the Civil Code, when the agent acts in his own name, as in such a case the agent would be directly liable to the person with whom he contracted as if it were a personal matter of the agent's, yet this does not occur when the acts performed by the agent involve the principal's own things, and in the document Exhibit E, which was inserted in the complaint when the latter was amended, it appears that the defendant Valdes, who signed the said document, stated that the property, the option to buy which he gave to Borck, the plaintiff, belonged to Legarda, it is unquestionable that, pursuant to the above-cited provision of law, the action was properly brought against Benito Legarda as Valdes' principal, also that Valdes was prop-
369 erly included in the complaint as one of the defendants, for said article 1717, in providing that in cases like the one here in question the person who contracted with the agent has an action against the principal, does not say that such person does not have, and cannot bring one against the agent also, and the silence of the statute on this point should not be construed in that sense, when the rights and obligations,—the matter brought into discussion by means of the action prosecuted,—cannot be legally and juridically determined without hearing both the principal and the agent.

Section 114 of the Code of Civil Procedure in force, in treating of the parties who should be included in an action as defendants, includes among such parties any person who has or claims an interest in the controversy or the subject-matter thereof adverse to the plaintiff, or who is a necessary party to a complete determination or settlement of the questions involved therein; and there can be no doubt whatever, and the record itself shows, that the agent Benito Valdes was and is a necessary party in these proceedings for the complete and proper determination of the matter involved.

As one of the allegations of the complaint was that the defendant

Benito Valdes was the attorney in fact of Benito Legarda, the owner of the Nagtajan Hacienda,—a property, the option to buy which was granted by the said defendant Valdes to the plaintiff Borck, in the letter of December 4, 1911, Exhibit E,—there was attached to the complaint a copy of the instrument of power of attorney
370 marked Exhibit A, by virtue of which, as therein also set forth, the defendant Benito Valdes, the attorney-in-fact of Benito Legarda, in giving to the plaintiff the option to buy the said hacienda, had acted according to the aforesaid document Exhibit E, which was likewise inserted in the amended complaint as a part thereof.

Inasmuch as the relation which, according to the plaintiff, existed between Benito Legarda and Benito Valdes (in so far as regarded the obligation which, as averred by the plaintiff himself, was contracted by means of Exhibit E, and the fulfilment of the said obligation, which he believed he was entitled to exact of them) was established by means of the said allegations, supported, as it appeared, by the power of attorney Exhibit A, and by the letter or document Exhibit E, (which were made by the plaintiff a part of the complaint), the joining of the copy of the power of attorney to the complaint cannot be considered to have been done merely for the purpose of attesting the personality of either of the defendants, but to show the legal character of each of them in the obligation referred to, in view of the terms of the document Exhibit E, the authority under which the defendant Valdes acted in executing this document, as well as the fact of his having been granted such authority by the defendant Legarda, through means of the said power of attorney. So that as the two said documents, to wit, the Exhibit A or the instrument of power of attorney executed by Legarda in behalf of Valdes, authorizing him to perform various acts, among
371 them, that of selling, exchanging, ceding, or admitting in payment or by way of compensation or in any other manner acquiring or conveying all kinds of real property for such prices and on such conditions as he might deem proper; and the document Exhibit E, or the letter setting forth the option given to the plaintiff by Valdes to buy the said Nagtajan Hacienda belonging to Legarda, cannot be considered separately one from the other, in view of the allegations of the complaint and the action brought thereby against the two defendants; and as the said two documents, each a complement of the other, constituted the grounds of the action brought in the complaint, and as their genuineness and due execution were not denied under oath by either of the two defendants, as they might have been, pursuant to the requirements of section 103 of the Code of Civil Procedure, the plaintiff was not obliged to present at the trial, as proof, the afore-mentioned power of attorney to prove its existence and the fact of Valdes being his attorney in fact, vested with the powers specified in this instrument, notwithstanding the general denial made by the defendant Legarda in his answer, of the allegations contained in the complaint from its third paragraph on, in which paragraph that averment is made, supported by the copy of the said power of attorney attached to the complaint.

On the contrary, as the said document Exhibit A constitutes prima facie proof of the fact of Benito Valdes being the attorney in fact of Benito Legarda, and of his being vested with the powers
372 specified therein, on account of Legarda's not having denied under oath the genuineness and due execution of the said document, it was therefore incumbent upon Legarda himself to prove that he had not executed the said power of attorney in Valdes' behalf and that he had not conferred upon him, by virtue thereof, the powers therein mentioned. (Merchant vs. International Banking Corporation, 6 Phil. Rep., p. 314; Papa vs. Martinez, 12 Phil. Rep., p. 613; Chinese Chamber of Commerce vs. Pua Te Ching, 14 Phil. Rep., p. 222; Spanish-Philippine Bank vs. McKay and Zoeller, 27 Phil. Rep., p. 183; Knight vs. Whitmore, 125 Cal., 198; McCormick Harvesting Machine Co. vs. Doucette, 61 Minn., 40.)

The lower court, therefore, did not err in holding that Benito Valdes was the agent of Benito Legarda, vested with powers to execute contracts for the sale of real estate in the latter's name; nor in considering as proof the power of attorney, the plaintiff's Exhibit A, and in making it the basis of one of the conclusions of the judgment, notwithstanding that it was not offered as such proof by the plaintiff. Consequently, the court likewise did not err in admitting the evidence introduced by the plaintiff himself to show the existence of the contractual obligation on the part of the defendant Legarda, as principal of the other defendant, Valdes, and which was contended by the plaintiff to be one of the grounds of the action brought in his complaint against the two defendants.

373 It is unquestionable that, by means of the document Exhibit E, to wit, the letter of December 4, 1911, transcribed in the beginning of this decision, the defendant Valdes granted to the plaintiff Borck the right to purchase the Nagtajan Hacienda belonging to Benito Legarda, during the period of three months and for its assessed valuation, a grant which necessarily implied the offer or obligation on the part of the defendant Valdes to sell to Borck the said hacienda during the period and for the price mentioned,—and whereas the grant made by Valdes to Borck in the said letter was so made as a result of the requests of Borck himself, as stated in the letter itself, and of the negotiations previously entered into between the latter and Valdes with respect to the purchase of the hacienda, also as shown in the letter of the 2d of the same month of December, that is, the letter which two days before was addressed by Borck to Valdes, Exhibit C, the terms of the said document Exhibit E appear to be of the nature of an option contract between Valdes and Borck, inasmuch as, by means of said document, the former finally accepted the propositions of the latter with respect to granting that right to Borck. There was, therefore, a meeting of minds on the part of the one and the other, with regard to the stipulations made in the said document. But it is not shown that there was any cause or consideration for that agreement, and this omission is a bar which precludes our holding that the stipulations contained in Exhibit E is a contract of option, for, pursuant to

article 1261 of the Civil Code, there can be no contract with-
374 out the requisite, among others, of the cause for the obligation to be established.

In his Law Dictionary, edition of 1897, Bouvier defines an option as a contract, in the following language:

A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties within a limited time at a specified price. (71 N. Y., 420.)

From volume 6, page 5001, of the work "Words and Phrases," citing the case of Ide vs. Leiser (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

An agreement in writing to give a person the "option" to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets in præsenti, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or rather, from his point of view, he receives the right to elect to buy.

But the two definitions above cited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation, the subject of the agreement made by the parties; while in the case at bar there was no such cause or consideration.

375 The lower court in the judgment appealed from said:

There is some discussion in the briefs as to whether this instrument constitutes a mere offer to sell or an actual contract of option. In terms it purports to be the latter and in fact recites the acceptance of a "request" or offer, by the plaintiff. But viewing the instrument as in itself no more than an offer, it was at least a continuing one, "for three months," and as it is not claimed to have been withdrawn during that period, nor afterward, the plaintiff could at any time enter into an actual contract, if it were not such already, by mere acceptance.

So then, the lower court did not insist that, by the said document Exhibit E, a real contract of option was executed. He stated that it was at least a continuing offer for three months—an offer which it was neither alleged nor proven to have been withdrawn during that period—and held that by the plaintiff's mere acceptance at any time during the course of said period, the terms of the said document became a contract, if such it were not already.

There is therefore no foundation for the third assignment of error made by the defendant Valdes, to wit, that the lower court

erred in holding that the document Exhibit E was a contract of option and not an offer to sell.

And certainly this document Exhibit E contains an offer or promise on the part of the defendant Valdes, who signed it, to sell the hacienda in question to the plaintiff Borck, at its assessed valuation, and granted him three months within which to make use of his right to purchase the property. In order that such an offer, or proposal, or promise, on the part of Valdes, to sell the said hacienda might be converted into a binding contract for him and for
376 Borck, it was requisite that the latter should have accepted the offer, by making use of the right thereby granted him, within the period stipulated, and paid the price agreed upon in that document.

With specific reference to the sale of real estate, there is in fact practically no difference between a contract of option to purchase land and an offer or promise to sell it. In both cases the purchaser has the right to decide whether he will buy the land, and that right becomes a contract when use is made of it, or, what amounts to the same thing, when use is made of the opportunity, or when the offer or promise to sell the property is accepted in conformity with the terms and conditions specified in such option, offer, or promise.

An option for the purchase of real estate is merely a right of election to purchase, which, when exercised, becomes a contract. (Hopwood vs. McCausland, 120 Iowa, 218.)

So that in the case at bar it is immaterial whether the contents of the document be considered as an option granted by the defendant Valdes to the plaintiff to purchase the Nagtajan Hacienda, or as an offer or promise on the part of the former to sell the estate to the latter within the period and for the price specified in the Exhibit E.

In the defendants' answer no concrete allegation was made that either of them had withdrawn the said offer to sell, but the defendant Valdes introduced evidence to prove that the withdrawal of the offer was made before the plaintiff had accepted it, that is, before
377 January 17, 1912, and for this purpose presented a letter from the defendant Legarda (p. 103, part 1 of the record), dated November 13, 1911, and addressed from Paris to Mauro Prieto, also one of Legarda's attorneys in fact. In this letter Legarda said to Prieto, among other things, that with reference to the steps taken by Borck for the purchase of the Nagtajan Hacienda the addressee might say to Borck that the writer was not very anxious to sell the property unless for a price greater than ₱400,000 in cash. The defendant Valdes testified that the contents of this letter were communicated by him to Borck, though he did not state positively on what date. Valdes also presented the witnesses Alejandro Roces and Jose E. Alemany. The first of these testified that sometime during the second half of January, on an occasion when he was in Dr. Valdes' office, he heard the latter and Borck speaking, and that Borck said something to Dr. Valdes about ₱300,000, and that it would be difficult to find a purchaser for cash; and that he also heard them talk about ₱400,000. The second witness, Dr. Jose E. Alemany, also testified that about the 12th or 15th of January, at a

time when he was in Dr. Valdes' office, he heard a conversation between Valdes and Borck in which the former said to the latter that what Borck wanted was impossible, and that the latter replied to Valdes that it was very dear, that he did not want it, that he did not have the money. On this occasion, this witness also heard them talking about ₱400,000.

As the record does not show positively that the defendant Valdes, on the occasion above referred to, told the plaintiff Borck
378 that he (Valdes) withdrew the offer of sale contained in the document Exhibit E, for he merely communicated to Borck the contents of the said letter from Legarda to Prieto, nor is there any record of the date when he did this; and as the statements made by the witnesses with regard to the conversation they heard between Valdes and Borck are vague and as it cannot be deduced therefrom that such statements referred expressly to the fact that Valdes withdrew the said offer on that occasion, it must be concluded that there is no proof on this point. But, though it had been proven that the withdrawal of the offer was made in the month of December, 1911, or before January 17, 1912, as stated by Valdes' counsel in his brief, such a fact could not be a bar to, or annul the acceptance by the plaintiff Borck of the said offer on any date prior to the expiration of the three months fixed in the document Exhibit E, to wit, March 4, 1912, because the offer or promise to sell therein contained was not made without period or limitation whatever (in which case Valdes might have withdrawn it and the latter have accepted it at any time until it was withdrawn) but was made for three months, that is, for a specific period of time; and, as the plaintiff Borck had a right to accept the offer during that period, in relation with this exclusive right of his, it was Valdes' duty not to withdraw the offer during the same period. Therefore the withdrawal of the offer claimed to have been made by this defendant was null and void.

379 Consequently, the lower court did not err in holding that the said offer had not been withdrawn during the three months mentioned, and that it could be converted into a real contract by the plaintiff Borck's mere acceptance within the same period.

One of the allegations made by the plaintiff in the complaint, as aforesaid, is that on January 19, 1912, while the said offer still held good, the plaintiff accepted it in writing, in conformity with its terms, and requested permission of the defendant Valdes to inspect the property titles and other documents pertaining to the estate, and offered to pay the defendant Valdes immediately and in cash, as soon as a reasonable examination could be made of the said property titles and other documents, the price stipulated and agreed upon in the contract for the said hacienda. To prove this allegation, the plaintiff presented the document Exhibit G, which reads as follows:

Manila, January 19, 1912.

Dr. Benito Valdez, 195 San Sebastian, City.

SIR: I hereby advise you that I am ready to purchase the Hacienda Nagtahan, situated in the districts of Sampaloc and Nagtahan,

Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000) pesos Ph. c. the price quoted in the option given me by you.

Full payment will be made on or before the third day of March, 1912, provided all documents in connection with the hacienda Nagtahan, as Torrens title deed, contracts of leases and other matters
380 be immediately placed at my disposal for inspection and if such papers have been found in good order.

Very truly yours,

W. BORCK.

In the preceding letter the plaintiff in fact did state that he accepted the offer made to him or the option given to him by the defendant Valdes in the document or letter of December 4, 1911, Exhibit E, for, even though it was not stated therein what option it was that was mentioned in the said letter, it is unquestionable that it could refer to no other than to the option or offer mentioned in the said Exhibit E, as no other was then pending between the plaintiff and this defendant.

But, aside from the fact that the complete payment of the ₱307,000 mentioned in the said letter was made to depend on the condition that all the documents relative to the Nagtajan Hacienda, such as the Torrens title, etc., be immediately placed at the plaintiff's disposal for his inspection, and be found satisfactory, the said tender of payment was offered to be made on or before March 3, 1912.

A simple statement of this last part of the said letter is enough to convince the mind that the plaintiff did not offer to pay, immediately and in cash to the defendant Valdes as he alleged in his complaint, the price stipulated and agreed upon between themselves in the said document Exhibit E. Of course, it is undeniable that the plaintiff Borck had a right to examine the title deed and
381 all the documents relative to the Nagtajan Hacienda, before the sale of the property should have been concummated by means of the execution of the proper deed of conveyance in his favor by the defendant Valdes as the attorney in fact of the other defendant Legarda, and, consequently, the plaintiff Borck was also entitled to refrain from making payment so long as he should not find the documents relative to the said property complete and satisfactory, an indispensable condition in order that the said deed of conveyance might be executed in his favor. But at the very moment this instrument *were* executed and signed by the vendor, the payment of the stipulated price should have been paid in order to be an immediate cash payment. Pursuant to the language of that part of the document or letter Exhibit G to which we now refer in respect to the payment, it cannot be understood that the plaintiff tendered payment to the defendant immediately and in cash, for the simple reason that if the documents had been placed by the defendant at the plaintiff's disposal for his inspection, for example, on January 20th, the day following the date of the letter Exhibit G, and had the plaintiff examined them and found them

satisfactory, and if the defendant Valdes had executed in the plaintiff's behalf the proper deed of conveyance or sale of the hacienda on the 25th of the same month of January, according to the exact terms of the letter of acceptance of the offer, Exhibit G, dated January 19, 1912, the plaintiff, that is, the purchaser Borck, could have made full payment to the defendant Valdes, of the ₱307,-
382 000, the price of the property on the 3d of March, 1912, or on any date on which the deed of conveyance was issued, from the 25th of January up to the said 3d day of March, for nothing else can be understood by, and no other meaning and scope can attach to, the words "full payment will be made on or before the third day of March, 1912." In short, as the said document Exhibit G is drawn up, in the part thereof relative to the offer of payment in the example above given, the purchaser Borck might pay the stipulated price of the property, or have the period from the 25th of January to the 3d of March within which to pay it, and meanwhile the ownership of the estate would already have been conveyed, through means of the proper deed, to the purchaser Borck, and he could not have been obliged to pay the said price until the very day of March 3, 1912, by reason of the contents of the said letter, Exhibit G.

In connection with the same allegation we have just been discussing, to wit, that the plaintiff Borck made a tender of payment to the defendant Valdes "immediately and in cash" of the price of the hacienda fixed in the instrument Exhibit G, the plaintiff also presented as proof, in relation to that consisting of the letter of January 19, 1912, Exhibit G, another letter by himself, also addressed to the defendant Valdes, under date of the 23d of the same month of January. This document is marked "Exhibit J" and is of the following tenor:

383 "January 23, 1912.

"Dr. Benito Valdez, 195 Calle San Sebastian, City.

"SIR: I have the pleasure to inform you that I can improve the conditions of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) pesos, Ph. c., ten days after the Torrens title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and these documents and papers have been found in good order.

"Respectfully yours."

——— ———.

As may be seen by the language in which the preceding letter is couched, the plaintiff virtually therein recognized that, just as he had done in the letter of January 19th, that is, the one written four days before, Exhibit G, the tender of payment to the defendant Valdes, of the price of the hacienda, could not be understood to have been a tender of "immediate and cash" payment, as alleged in the complaint, but that payment might be made on any date prior to

March 3d, or on this same date, even though he had found satisfactory all the documents that the defendant might have placed at his disposal to be examined, and, consequently, though the proper deed of conveyance of the property had been executed in his behalf. Nothing else is meant by the statement made by the plaintiff Borck to the defendant Valdes in the said letter of January 23d, Exhibit J, that he had the pleasure to inform him that he could improve the conditions of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount of purchase price, ₱307,000,
384 ten days after the torrens title deeds and all papers in connection with the hacienda had been placed at his disposal for inspection and these documents and papers had been found satisfactory, for the payment which Borck offered to make to Valdes, of the price of the property, in the said letter Exhibit J, was not indeed to be effected on the third of March or prior thereto, but within the limited period of ten days after the documents relative to the property should have been delivered to the plaintiff for his inspection and been found satisfactory. And were there any doubt that the meaning or the sense of the said offer was not such as just above stated, that doubt would be removed by a mere perusal of the statement made therein by the plaintiff telling the defendant Valdes that he, the former, had the pleasure to inform the latter that he, Borck, could improve the conditions of payment for the hacienda, to wit, those mentioned in the letter written four days before, that is, on January 19th, Exhibit G, in the manner aforementioned by paying the whole amount of the purchase price ten days after the documents had been delivered to the plaintiff and he had found them satisfactory.

But, the said letter of January 23d, Exhibit J, is drawn up in such a way that it also does not contain any such tender of "immediate and cash" payment by the plaintiff Borck to the defendant Valdes.

Indeed, as the said letter makes the total payment of the price of the property depend on the delivery by the defendant Valdes to the plaintiff Borck of all the documents relative to the hacienda,
385 and of the further condition that the latter should find such documents in good order and satisfactory, and as a period of ten days was fixed for the said payment, counting from the date of the aforementioned delivery of the documents, and on the condition that Borck should find them satisfactory, the date of payment cannot be understood to have been fixed for any certain day after those ten days, or for the eleventh day, for the simple reason that, for example, if the documents were delivered to Borck on February 1 for his inspection, and after the lapse of ten days thereafter he had not finished examining them and had kept them in his possession for this purpose for ten days longer, that is, until February 20th, and then had found them satisfactory, the result would be that the payment would have had to be made, not ten days, but twenty days, after the delivery of the said documents, and this would have been authorized by the ambiguous terms in which the said tender of payment is couched.

But supposing that it had been the purpose, as it appears to have been, of the plaintiff Borck, in fixing those ten days in the said letter Exhibit J, for the payment, that there should be an interval of the said ten days between the delivery and inspection of the said titles and the determination of whether they were satisfactory or not, it might also have happened that on the third day after the delivery of the titles, these might have been found by the purchaser to be satisfactory, and that the vendor might immediately have executed the proper deed of conveyance of the property in the purchaser's
386 behalf. In that event, according to the terms of the said letter Exhibit J, the purchaser Borck would not be obliged to make payment to the vendor Valdes until seven days after the execution of the deed of conveyance and the transfer of the property to the former, that is, not until the expiration of the period of ten days counting from the date of the delivery of the documents to the purchaser; and it is evident that such a payment would not be in cash, pursuant to the provisions of article 1462, in connection with article 1500, of the Civil Code.

Furthermore: The plaintiff Borck also presented another letter in connection with his aforementioned allegation made in the complaint, and connected with the other two previous letters, Exhibits G and J, to prove what he had intended to prove by means of the latter, to wit, that the tender of payment made by him to the defendant was made in accordance with the said allegation "immediately and in cash."

This letter (Exhibit K) bears the date of February 28, 1912, and reads as follows:

"Manila, P. I., February 28, 1912.

"Dr. Benito Valdez, Attorney-in-fact for Benito Legarda, Manila.

"DEAR SIR: To prevent any misunderstanding, I wish to advise you that the purchase price of the Hacienda Nagtahan is ready to be paid over to you, and I request you to notify me whenever
387 it is convenient for you to place at my disposal for inspection the title-deed and papers in connection with said estate.

Very respectfully,

W. BORCK."

As also may be seen by the very terms employed by the plaintiff in this letter, he virtually admits, clearly acknowledges, that in the two previous letters, Exhibits G and J, he had made this tender of payment of the price for the Nagtajan Hacienda in such a manner that it could not be understood to have been in accordance with the agreement entered into between himself and Valdes, that is, that the payment should be in cash.

The said letter Exhibit K in fact begins with these words: "To prevent any misunderstanding," and then says: "I wish to advise you that the purchase price for the Hacienda Nagtahan is ready to be paid over to you, and request you to notify me whether it is convenient for you to place at my disposal for inspection the title deed and papers in connection with said estate."

The first words of the letter of course indicate that the plaintiff Borck himself, in writing them, feared, at least he was not sure, that, in accepting, in the letter of January 19th, Exhibit G, the offer of the sale of the hacienda to him by Valdes, and in making therein the tender of payment and in renewing this tender in the letter, Exhibit J, of the 23d of the same month, he, the plaintiff, had
388 not conformed to the terms of the offer of sale or of the option to buy, given to him by Valdes by means of the document Exhibit E, for in the said last letter, Exhibit K, he takes it for granted that there was or might be some misunderstanding between himself and the defendant Valdes with respect to the tender by him made of the price of the estate. According to the admission of the plaintiff Borck himself in his complaint, this price was to be paid "at once and in cash." In the said letter Exhibit K, to avoid that misunderstanding, the plaintiff Borck said to the defendant Valdes that the purchase price for the hacienda was ready to be paid over to him, and requested to be notified by Valdes whenever it was convenient for him to place at the plaintiff's disposal for inspection the title-deed and papers in connection with said estate.

The notification contained in this letter written by Borck to Valdes, that the purchase price of the estate was ready to be paid over to the latter, and the mention made in this same letter, immediately after the notification, of the inspection which the plaintiff wished to make of the titles that he desired should be delivered to him for this purpose, show that this last letter, Exhibit K, relates to the one that preceded it, dated January 23, Exhibit J, or, what amounts to the same thing, is a result of it for it is virtually said therein that the price of ₱307,000 (which, according to his previous letter, he had agreed to pay for the hacienda, ten days after the delivery to him of the documents relative to the estate and their having been found by him to be satisfactory) was already
389 held in readiness by the plaintiff for delivery to the defendant, but this delivery of the price was subordinated to the delivery requested by the plaintiff of those titles and other documents, and to the plaintiff's finding such documents satisfactory, and the delivery of the price was also subordinate to the period of the ten days, mentioned in the said letter Exhibit J. The letter Exhibit K can have no meaning whatever in that part thereof where reference is made to the offer of payment of the price of the hacienda, or to the payment itself, except in connection with the previous Exhibit J, inasmuch as the letter Exhibit K does not state when Borck was to deliver to Valdes the price which, according to this same letter, the plaintiff already had in readiness for that purpose. So that neither in the letter Exhibit K is any specific offer of payment made by the plaintiff Borck to the defendant Valdes, of the price stipulated in the document Exhibit E to be paid "at once and in cash," notwithstanding its being said therein that the plaintiff had the money ready to be turned over to the defendant.

Upon the plaintiff Borck's testifying at the trial as a witness, the said documents Exhibits E, G, J, and K, and also others lettered from A to M, including the four just referred to, were presented in

evidence. Among these documents is found Exhibit F, which reads as follows:

390 "Manila, January 17, 1912.

"Dr. Benito Valdez, 195 San Sebastian, City.

SIR: In reference to our negotiations regarding the Hacienda Nagtahan at Manila, property of Mr. Benito Legarda, consisting of about 1,993,000 square meters of land, I offer to purchase said property for the sum of three hundred and seven thousand (307,000) pesos P. c. cash, net to you, payable the first day of May 1912 or before and with delivery of a Torrens title free of all encumbrances as taxes and other debts.

Respectfully yours,

—— ——"

On the said documents being presented in evidence at the trial, the defendants objected to their admission; the court reserved his decision thereon and in the judgment appealed from made no mention whatever nor entered into any considerations in regard to the contents of the said document Exhibit F, and in ruling on the defendants' motion for a new trial, in which motion they assigned as one of the errors of the said judgment the fact that no notice whatever had been taken therein of the said Exhibit F, which defendants claimed to be one of their most important proofs, the court stated as a reason for the omission that this Exhibit F was unsigned, unidentified and was not attested by anyone; besides, that no conclusion, either in favor of or against the plaintiff, could be based on it, because, although the said letter, that is, Exhibit F, might have been actually delivered, no right whatever could be predicated
391 thereon, nor any liability, and that it was, therefore inadmissible.

The record shows that when Exhibit F and Exhibits G, J, K, L, and M, were shown to the defendant Valdes by the plaintiff's counsel Beaumont, for their identification and in order that Valdes might state to the court whether he had received the originals and, if so, where they were, defendant merely said in reply that he had received three originals from Borck and two originals from Beaumont (p. 14 of the transcription of the stenographic notes), and exhibited the originals of Exhibits C, M, L, K, and G, but not that of Exhibit F. The plaintiff Borck having been presented as a witness, and after he had been asked the first four questions by Attorney Hartford Beaumont, the latter made the following statement: "I would like to interrupt the witness at this moment in order to present all the exhibits A to M, which were identified by the previous witness." Counsel for the defendant Legarda objected to the admission of the said documents on the ground that they were incompetent, immaterial and irrelevant. The same objection was also made by counsel for the defendant Valdes in behalf of his client, and the court said that he would reserve his decision. (Pages 24 and 25 of the record.)

During the examination of plaintiff Borck, in which Attorney

Beaumont plied him with questions in regard to the aforementioned documents, beginning with Exhibit A and, when showing him the documents themselves, on coming to Exhibit F, after having given attention to other exhibits, among which was the Exhibit O,
392 which we shall mention later on, the plaintiff answered the questions put to him with respect to the Exhibit F in the following manner, as found in the transcription of the stenographic notes in English (p. 61 of the record):

Q. Now I will show you Exhibit F, and call your attention to the fact that it has the same date, January 17th, as Exhibit O, and ask you to state the circumstances under which Exhibit O was signed.

A. This is my acceptance of the option of Dr. Valdez.

Q. How does it happen that it has the same date as Exhibit O?

A. Because I don't believe in hanging back with my business. I conclude it as soon as possible. As soon as I got the offer, I made my acceptance to Dr. Valdez.

The document Exhibit F, as has been seen, is unsigned; but the document Exhibit J, to wit, the aforementioned letter of January 23, 1912, is in the same condition. It is true that although the document Exhibit J is unsigned because it is a copy of the letter addressed on that same date to Valdes by Borck, (Valdes testified that he kept the original in his possession) while Valdes did not present the original of Exhibit F and did so only with respect to the other letters before mentioned, although he stated with reference to the letters he had received from Borck, that as he was not a business man and was not acquainted with that kind of business, he sometimes read the letters and, after taking notes of their contents, would transmit their substance to Mr. Legarda, and at other
393 times would send to him the letters themselves, from which testimony by Valdes it is concluded that he was not in the habit of keeping the originals he received from Borck. However, as has already been seen, notwithstanding that Exhibit F was not identified by Valdes, the plaintiff Borck, referring to the said document on its being shown to him by his attorney, who called his attention to the fact that it had the same date, January 17th, as Exhibit O, and asked him to state the circumstances under which Exhibit O was signed, said that Exhibit F was his acceptance of Dr. Valdes' option; and in answering the next question, explained the reason why Exhibit F bore the same date as Exhibit O, saying that "he did not believe in hanging back with his business;" that he "concluded it as soon as possible;" and that "as soon as he got the offer, he made his acceptance to Dr. Valdes."

Exhibit O is of the following tenor:

"Manila, January 17, 1912.

"W. Borck, Esq., Manila.

DEAR SIR: Referring to our recent conversations regarding the proposed purchase by clients of ours of the property known as the Hacienda Nagtajan, I beg to advise you that our clients, after investigation of the physical conditions of the property, are prepared

to make an offer for the purchase of the same at the price named by you, to wit, ₱380,000, cash, provided that there is good title to the property, that it contains substantially the area represented, namely, 1,993,000 square meters, and that the existing leases upon certain portions of the said property are found to be in proper form. It is the desire of our clients to have an opportunity to investigate the legality of the title and leases at the earliest practicable mo-
394 ment, and they have authorized us to say that if the conditions are satisfactory with regard to these matters, they are prepared to make you a firm offer of the amount above named, and to make a deposit of a reasonable amount as an evidence of good faith.

Very truly yours,

BRUCE, LAWRENCE, ROSS AND BLOCK.
JAMES ROSS."

Connecting the contents of this document Exhibit O with those of the previous Exhibit F, and taking into account the testimony given by Borck, as above transcribed, on his answering the questions put to him by his own attorney, relative to the said exhibits, it is clearly understood that on Borck's receiving the letter of January 17, 1912, from the law firm of Bruce, Lawrence, Ross and Block, and signed by James Ross, Exhibit O, in which these gentlemen stated that they prepared to make an offer for the purchase of the Hacienda Nagtajan at the price of ₱380,000 cash, he wrote on the same date, January 17th, to Dr. Valdes the letter, a copy of which is Exhibit F, in which, referring to the negotiations between them regarding the said Nagtajan Hacienda, he offered to purchase this property for ₱307,000 cash and net, payable on or before the first day of May, 1912, delivery to be made to him of a torrens title free of all encumbrance, such as taxes and other debts. For this reason the plaintiff Borck stated in his testimony that the said letter Exhibit F was his acceptance of Dr. Valdes' option, for, "not believing in hanging back with his business" and "concluding it as soon as possible," "as soon as he got the offer," contained in the let-
395 ter Exhibit O, from the said law firm, he transmitted or made known his acceptance to Dr. Valdes.

We do not think there could be a better identification of the letter Exhibit F than that made by its own writer, the plaintiff Borck, for he admitted in his said testimony that he wrote this letter, and although the defendant Valdes did not present the original of the said letter Exhibit F, perhaps because it was one of those which he did not keep in his possession, there can be no doubt whatever that the original of the said Exhibit F was transmitted to Valdes by the plaintiff Borck, for the latter explicitly said so in stating that that letter was his acceptance of Dr. Valdes' option; and, besides, the plaintiff explained why he had written the said letter, on referring to the relation between the said Exhibit F and the Exhibit C, on account of the same date both letters bore, and on making further explanations in the matter, said: "As soon as I got the offer, I made

my acceptance to Dr. Valdez." Furthermore, if there were still *may* doubt whatever about this, it would disappear after a consideration of the following quotation taken from the plaintiff's written brief filed before the lower court rendered judgment, in which latter mention is made of the said brief and of the questions discussed therein; the said brief is found on pages 190 to 206 of the record and is signed, on page 195, by the plaintiff's attorneys Aitken and Beaumont:

396 "3.—The Acceptance.

"On the 17th of January, 1912, Mr. Borek received a written offer (Exhibit O) for the property from Mr. James Ross of this city for the price of ₱380,000 and thereupon on the same day wrote Dr. Valdez the letter which appears as Exhibit T (pp. 56, 169 of the record). No question arises as to the validity of this acceptance for reasons which will presently appear. * * * ."

As may be seen, in that paragraph of this brief signed by the plaintiff's attorney there is a restatement of what the plaintiff had said in his testimony, to wit, that as soon as he received, on January 17, 1912, a written offer, Exhibit O, from Mr. James Ross of this city for the property in question and for the price of ₱380,000, he wrote on the same day the letter to Dr. Valdes that appears as Exhibit T (pp. 56, 169 of the record). In this same brief the statement was also made that no question had arisen as to the validity of this acceptance, for the reasons which would presently appear.

It is to be noted that Exhibit T, mentioned in the preceding paragraph transcribed from *from* the brief, is the same Exhibit F, which was erroneously marked with the letter T in the said paragraph, as shown by the fact that in this, Exhibit T is referred to as being found on page 56 of the record, which page contains Exhibit F, and page 169 of the record contains a copy of the same Exhibit F; furthermore, the date of this latter exhibit, January 17th, is also that of the Exhibit O, mentioned in the said brief.

The trial court therefore erred in not admitting in evidence the said document Exhibit F, and, consequently, in not taking it
397 into consideration in the judgment appealed from. This rejection cannot be warranted by the fact that the defendants themselves opposed its admission, for the latter also opposed the admission of all the documents presented by the plaintiff, on the understanding that, as they were not bound by the documents Exhibits A and E, the one as principal and the other as agent, such documents were immaterial, incompetent and irrelevant, nevertheless the trial court admitted some of those documents and considered them for the purpose of drawing his conclusions in the judgment rendered.

It is hardly necessary now to show that the said letter of January 17, 1912, (Exhibit F) was Borek's acceptance of the option or offer of sale made to him by the defendant Valdes in his letter of December 4, 1911, (Exhibit E), for the plaintiff Borek himself admitted in his testimony at the trial that the letter Exhibit F was his acceptance of the said option.

In fact, the plaintiff Borck, referring in the letter, Exhibit F, to the negotiations between himself and Valdes regarding the Nagtajan Hacienda belonging to Benito Legarda, offers to purchase the said property for the sum of ₱307,000, cash and net, payable the first day of May, 1912, or before, the plaintiff to be furnished with a torrens title free of all encumbrance, such as taxes and other debts. The offer of sale or option of purchase contained in the document Exhibit E, was for the period of three months, from December 4,
1911, for the assessed valuation of the property, understood
398 to be ₱307,000, though subsequently at the trial it was fixed by agreement of the parties at ₱306,954 and payment was to be made in cash, for, even though this was not stated in the document, that failure itself so to state created the understanding that the price was to be paid in cash when delivery of the property was made, in accordance with the provisions of article 1462, in connection with article 1500, of the Civil Code. The plaintiff Borck recognized this in his complaint, in making the allegation we considered at the beginning of this decision, to wit, that he accepted in writing the said offer in conformity with its terms and offered to pay to the said Valdes, "immediately and in cash" the price stipulated; and he also so testified at the trial, saying, in reference to the conditions of the payment of the purchase price, that "the conditions were not discussed, because the payment was to be made in cash on exhibition of the documents." Now then, in the document Exhibit F, that is, the letter of January 17, 1912, it is stated that payment of the net amount would be made in cash on the first day of May, 1912, or before. So that it may be said with all the more reason that in relation to the other offers of payment contained in the documents G, J and K, that in the said letter, Exhibit F, the plaintiff Borck, in accepting the said offer of sale, did not make an offer to pay the price "immediately and in cash," as stated in his allegation set forth in the complaint, for, by virtue of the said document, he reserved to himself the
right to make the payment on the 1st of May, 1912, or on
399 any day prior thereto, as might suit him, that is, two months after the termination of the option or of the offer, to wit, on or before March 4, 1912, although the deed of conveyance of the property in his favor *were* executed by the defendant Valdes on any date comprised within the period of the option, that is, within the three months which ended on the said 4th day of March, 1912, whereby the plaintiff virtually gave himself five months from the date of the offer of sale or option of purchase, to effect the said payment. This is evidently not an offer to pay "immediately and in cash," nor is it a payment in cash, as the law provides, nor as the plaintiff Borck himself understood it to be, when he stated in his testimony that the payment was to be made in cash upon exhibition of the documents.

Duly considering the documents Exhibits F, G, J and K, that is, the statements made by the plaintiff Borck in the letters of January 17, 19 and 23, 1912, and February 28th of the same year, addressed by him to the defendant Valdes, in accepting the option that this latter had granted him for the purchase of the Nagtajan Hacienda,

or the offer of sale of the said hacienda defendant made to the plaintiff, with respect to the payment of the price thereof, it is seen that in the said documents the plaintiff Borck offered to pay to the defendant Valdes the said price, first within the period of five months from December 4, 1911, afterwards within the term of three months from the same date of December 4th, and, finally, within a period which could as well be ten days as twenty or thirty or more days from the time Valdes should put at the plaintiff's disposal,
400 to be inspected, the titles and other documents relative to the said hacienda, and the plaintiff should find them satisfactory and the proper deed of conveyance should, in consequence thereof, be executed in his behalf by Valdes; and this evidently is an offer of payment in installments, and not an "immediate and cash" payment.

The lower court in the judgment appealed from says that as the document Exhibit E, dated December 4, 1911, gave the plaintiff a three months' option for the purchase of the property, a period which expired, therefore, on March 4, 1912, this necessarily allowed the plaintiff time for the payment until this last date, and as in the letter Exhibit G, of the date of January 19, 1912, the plaintiff said that he would pay before the expiration of the said period, in no manner could this have modified the option, rather, on the contrary, it coincided with it, the court adding, moreover, that a payment made on or before the 4th of March would have been a payment in cash, if this was required by the Exhibit E.

It is true that the period granted by the defendant Valdes to the plaintiff for purchasing the property, was three months from December 4, 1911, but not because this period expired on March 4, 1912, that is, the last day of the said three months, may it be understood that the defendant granted to the plaintiff the period for payment until the very last day, March 4, 1912, for the simple reason that, the period for the purchase being three months, that is, the time during which the plaintiff Borck could make use of the power or the right granted to him by Valdes to arrange for
401 the purchase of, and to purchase in fact, the said property, if Borck purchased it on any date prior to March 4, 1912 (on January 19, 1912, for example) the result would be that the proper deed of sale being consequently executed in his favor on the said date of January 19th, and the time that payment would be made not having been fixed in the said document Exhibit E, such payment would have to be made at the time of the delivery of the thing sold, pursuant to article 1500 of the Civil Code; but as, in accordance with article 1462 of the same code, the execution of the deed of sale is equivalent to the delivery of the thing which is the object of the contract, the payment would not be in cash if it were not made on the same 19th day of January, 1912, and if it were postponed until some other later day, or until March 4, 1912. In short, it is impossible to confound the period of the option granted to the plaintiff Borck for the purchase of the Nagtajan Hacienda, with the period for the payment of its price, had he purchased it. The plaintiff Borck had three months, from December 4, 1911, within

which to make the purchase; to make the payment he did not have a single day after the date on which the proper deed of sale would have been executed in his favor; he was to pay the price at the very moment the said deed was executed, because, by this means, the property would have been delivered to him, although there still might have been lacking one or two months of the three months' period of the said option. This is the payment in cash to which the law refers in the sale of real estate in cases where the
402 time for making payment has not been fixed, and the plaintiff himself, Borck, so understood when he stated in his testimony, as we have before said, that, as the conditions for the payment had not been discussed, payment was to be made in cash on exhibition of the documents, or, what amounts to the same thing, on the execution of the proper deed of sale of the property in his favor. It is therefore evident that, in view of the fact that the time of the payment was not fixed therein, the document Exhibit E, dated December 4, 1911, required the payment to be made in cash, and the lower court erred in holding that the plaintiff Borck's letter, Exhibit G, of the date of January 19, 1912, in stating that the payment would be made on or before March 4, 1912, in no manner modified the option or offer of sale contained in the document Exhibit E, but that on the contrary it coincided therewith; also in holding that a payment made on or before March 4, 1912, would have been a cash payment.

The letter of December 4, 1911, Exhibit E, contained, as aforesaid, an offer of sale or a proposal of sale on the part of the defendant Valdez to the plaintiff Borck, of the Nagtajan Hacienda, for the assessed valuation of the same, effective during the period of three months counting from the said date. Such proposal or offer was an expression of the will only of the defendant Valdes, manifested to the plaintiff Borck. In order that such a proposal might have the force of a contract, it was necessary that the plaintiff Borck's will should have been expressed in harmony with all the terms of the said proposal.

403 Consent is shown by the concurrence of the offer and the acceptance of the thing and the cause which are to constitute the contract. (Article 1262, Civil Code.)

There is no contract unless, among other requisites, there is consent of the contracting parties. (Article 1261, paragraph 1, of the same Code.)

Promises are binding in just so far as they are accepted in the explicit terms in which they are made; it not being lawful to alter, against the will of the promisor, the conditions imposed by him, (Decision of the Supreme Court of Spain, of November 25, 1858); for only thus may the indispensable consent of the parties exist for the perfection of the contract. (Decision of the same court, of September 26, 1871.)

An option is an unaccepted offer. It states the terms and conditions on which the owner is willing to sell or lease his land, if the holder elects to accept them within the time limited. If the holder

does so elect, he must give notice to the other party, and the accepted offer thereupon becomes a valid and binding contract. If an acceptance is not made within the time fixed, the owner is no longer bound by his offer, and the option is at an end. (Words and Phrases, Vol. 6, p. 5000, citing McMillan v. Philadelphia Co., 28 Atl., 220, 159 Pa., 142.)

An offer of a bargain by one person to another, imposes no obligation upon the former, unless it be accepted by the latter, according to the terms in which the offer was made. Any qualification or, or departure from, those terms, invalidates the offer, unless the same be agreed to by the person who made it. (Eliason et al. v. Henshaw, 4 Wheaton, 225.)

404 In order that an acceptance of a proposition may be operative it must be unequivocal, unconditional, and without variance of any sort between it and the proposal, * * *. An absolute acceptance of a proposal, coupled with any qualification or condition, will not be regarded as a complete contract, because there at no time exists the requisite mutual assent to the same thing in the same senses. (Bruner et al. v. Wheaton, 46 Mo., 363.)

As already seen while we were considering the documents Exhibits F, G, J and K, the plaintiff Borck accepted the offer of sale made to him or the option of purchase given him in document Exhibit E by the defendant Valdes, of the Nagtajan Hacienda, for the assessed valuation of the same, but his acceptance was not in accordance with the condition with regard to the payment of the price of the property under which the offer or the said option was made for, while this payment was to be paid in cash, as the plaintiff Borck himself admitted and the defendant Valdes positively stated in his testimony, and also as provided by law, for the reason that the time was not fixed in the said offer or option when the payment should be made, in the aforesaid four documents Exhibits F, G, J and K the plaintiff Borck made the offer to pay the said price, in the first of them, within the period of five months from December 11, 1911; in the second, within the period of three months from the same date, and, finally, in the other two documents, within an indefinate period which could as well be ten days as twenty or thirty or more, counting from the date when the muniments of title relative to the said hacienda should have been placed at his disposal to be inspected and he should have found them satisfactory
405 and, in consequence thereof, the deed of conveyance should have been executed in his favor by the defendant Valdes.

So that there was no concurrence of the offer and the acceptance as to one of the conditions related to the cause of the contract, to wit, the form in which the payment should be made. The expression of Borck's will was not in accordance with all the terms of Valdes' proposal, or, what amounts to the same thing, the latter's promise was not accepted by the former in the specific terms in which it was made, and finally, the acceptance of the said proposal on Borck's part was not unequivocal and without variance of any sort between it and the proposal, because, in view of the terms in

which the payment was offered by Borck in his said letters of January 17, 19 and 23, Exhibits F, G, J and K, there was variance from the moment in which according to said terms, in the first two letters, the payment of the price should be made on or before the 1st of May and on or before the 3rd of March, 1912, respectively, that is, within a period limited in those letters, and the offer of payment was equivocal inasmuch as, by the last two letters, it was made to depend on certain acts as a basis for fixing the period in which the said payment should have to be made; finally, there was no mutual conformity between the person who made the proposal or offer, Valdes, and the person who accepted it, Borck, in the same sense with respect to the form of payment, and Borck altered from the terms of the proposition with regard to the form of pay-
406 ment and the record does not show that Valdes assented to such variance.

It is, therefore, evident that, in accordance with the provision of law and the principles laid down in the decisions above cited, the proposal or offer of sale made by the defendant Valdes to the plaintiff Borck, or the option of purchase granted by the former to the latter, with respect to the Nagtajan Hacienda, in the document Exhibit E, was not converted into a perfect and binding contract for them, and that as Valdes did not assent to the modification introduced by Borck in the offer of sale made by this defendant in regard to one of its terms, to wit, the said form of payment, the said offer became null and void, and, consequently, Borck has no right to demand of the defendant Valdes and of this *letter's* principal, the other defendant, Legarda, or of the administrators of the estate left by Legarda at his death which occurred during the course of these proceedings, whose names appear at the beginning of this decision, the fulfilment of that offer, nor, therefore, any indemnity whatever for such nonfulfilment.

The lower court erred, then, in finding otherwise in the three conclusions of law contained in the judgment appealed from which were mentioned at the beginning of this decision and on which, in short, the pronouncement made in that judgment was founded.

As the power of attorney conferred by Benito Legarda upon Benito Valdes was explicit and positive, according to the document
407 Exhibit A, a copy of which was attached to the complaint, to sell and convey all kinds of real estate at such prices and on such conditions — Valdes might deem proper, and also as the terms of the option granted by Valdes to Borck, or of the offer of sale made by the former to the latter in the document Exhibit E, of the Nagtajan Hacienda belonging to Benito Legarda, are clear; and, furthermore, as the plaintiff made the said documents an integral part of the complaint as the ground thereof, the testimony introduced by the defendant Valdes to prove that the said offer of sale made by him to Borck was subject to the approval of his, Valdes', principal, was improper (sections 103 and 285, Code of Civil Procedure) and the lower court did not err in not taking that testimony into consideration in his judgment. Likewise the evidence presented by the defendant Valdes in an endeavor to prove that the said offer of sale was obtained from him by the plaintiff Borck by means of fraud and

deceit, was improper. Consequently the trial court did not err by making no finding in the judgment on those two points.

In conclusion, as the offer of sale of the Nagtajan Hacienda, made by Valdes to Borck, or the option of purchase thereof granted by the former to the latter by the letter of December 4, 1911, Exhibit E, did not constitute a perfect contract and, consequently, was not binding upon the defendants Valdes and Legarda, nor the plaintiff Borck, by reason of the lack of the mutual assent of the parties concerned therein, wholly in accordance with the terms of the said offer, there can be no obligation demandable in law by virtue of
408 the stipulations contained in the said document, and the action prosecuted by the plaintiff for that purpose in these proceedings is improper.

For the foregoing reasons the judgment appealed from is reversed and we absolve the defendants from the complaint. The costs of first instance shall be imposed upon the plaintiff. No special finding is made with respect to those of this second instance.

After the expiration of twenty days let judgment be entered in accordance herewith, and ten days thereafter let the case be returned to the court whence it came.

So ordered.

(Sgd.) MANUEL ARAULLO.

We concur:

(Sgd.) C. S. ARELLANO.
(Sgd.) FLORENTINO TORRES.
(Sgd.) E. FINLEY JOHNSON.

We concur in the result:

(Sgd.) SHERMAN MORELAND.
(Sgd.) GRANT T. TRENT.

409 Thereafter and on the 31st day of March, 1916, the parties were duly notified of the foregoing decision, and counsel for plaintiff and appellee duly excepted on the 13th day of April, 1916, as follows:

UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

W. BORCK, Plaintiff and Appellee,
versus
BENITO LEGARDA et al., Defendants and Appellants.

Exception.

Now comes the plaintiff-appellee in the above-entitled action, and excepts to the decision of this Court, rendered on the 30th day of

March, 1916, and hereby gives notice that the allowance of an appeal from said decision to the Supreme Court of the United States will be prayed for in due time.

Manila, P. I., April 8, 1916.

(Sgd.) HARTFORD BEAUMONT,
THOS. D. AITKEN,
Attorneys for Plaintiff-Appellee.

Received copy, April 10, 1916.
GILBERT, COHN & FISHER.

410 Thereafter and on the 17th day of April, 1916, Honorable Grant T. Trent, Associate Justice of the Supreme Court of the Philippine Islands, Acting in Vacation, entered the following order:

(Heading and Title Omitted.)

Order.

Resolving the pleading filed by counsel for the plaintiff and appellee in the above-entitled case taking exception to the decision rendered by this Court and announcing his intention to appeal it to the Supreme Court of the United States,

Let the exception be recorded as filed in due time and form.

Baguio, Benguet, April 17, 1916.

(Sgd.) GRANT T. TRENT,
Associate Justice, Acting in Vacation, Supreme Court, P. I.

Copy furnished Messrs. Haussermann, Cohn & Fisher, Mr. Thos. D. Aitken, Messrs. Beaumont & Tenney.

411 Thereafter and on the 24th day of April, 1916, final judgment was rendered in the said cause, the same being in the words and figures following, to-wit:

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands, April 24, 1916.

File No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDEZ, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Appellants.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after

consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 30th day of March, A. D. nineteen hundred and sixteen.

412 By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 13th day of February, 1913, and from which the above-entitled appeal was taken, be, and the same is hereby reversed, absolving the defendants from the complaint. The costs of first instance shall be imposed upon the plaintiff. No special finding is made with respect to those of this second instance.

[Seal of the Supreme Court of the Philippine Islands.]

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

413 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borek, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDEZ, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Appellants.

The above named plaintiff, conceiving himself aggrieved by the decree made and entered on the 24th day of April, 1916, in the above-entitled case, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., May 5, 1916.

(Sgd.) BEAUMONT & TENNEY,
" THOS. D. AITKEN,
Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

(Sgd.) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

414 On the same day, May 5, 1916, the attorneys for plaintiff and appellee filed the following petition for writ of error:

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDEZ, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Appellants.

Petition for Writ of Error.

To the Honorable Justices of the Supreme Court of the United States:

Comes now the above named plaintiff, by his attorneys, and complains that in the record and proceedings had in said cause, and also in the rendition of the judgment in the above-entitled cause in the Supreme Court of the Philippine Islands against the said
415 plaintiff, on the 24th day of April, 1916, manifest error hath happened, to the great damage of the said plaintiff.

Wherefore, said plaintiff prays for the allowance of a writ of error in said cause, and for such other orders and process as may cause same to be corrected by the said United States Supreme Court.

Manila, P. I., May 5, 1916.

(Sgd.) BEAUMONT & TENNEY,
(Sgd.) THOS. D. AITKEN,
Attorneys for Plaintiff.

Allowed, this 20th day of May, 1916.

(Sgd.) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

416 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDEZ, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Appellants.

Assignment of Errors.

Appellants in the above-entitled case, in connection with their petition for appeal and writ of error herein, present and file herewith

their assignment of errors as to the matters and things in which they say the decree entered herein on the 24th day of April, 1916, is erroneous, to-wit:

I.

The Court erred in holding that the offer to sell the Hacienda de Nagtahan, set out in the amended complaint, and introduced
417 in evidence as Exhibit "E," had not been accepted by the original plaintiff.

II.

The Court erred in holding that Exhibit "G" was not a full and complete acceptance of said offer.

III.

The Court erred in holding that under the terms of Exhibit "G" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

IV.

The Court erred in holding that Exhibit "J" was not a full and complete acceptance of said offer.

V.

The Court erred in holding that under the terms of Exhibit "J" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

VI.

The Court erred in holding that Exhibit "K" was not a full and complete acceptance of said offer.

418 VII.

The Court erred in holding that under Exhibit "K" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

VIII.

The Court erred in holding that the appellants might rely upon the alleged error of the Court below in sustaining their own objection to the introduction of Exhibit "F."

IX.

The Court erred in holding that Exhibit "F" was other than the original of a letter written by plaintiff but never signed, delivered, or communicated to the defendants.

X.

The Court erred in holding that Exhibit "F" is a copy instead of an original.

XI.

The Court erred in holding that the acceptance attempted by the original plaintiff in Exhibit "F" was not subsequently wholly abandoned, and the acceptance therein set forth had not been completely substituted, by a later and valid act.

419 XII.

The Court erred in failing to find that at the time of filing this suit there was not a binding and valid contract for the conveyance of real estate, between the parties.

XIII.

The Court erred in revoking the decision of the Court below and failing to award to plaintiff specific performance, and accounting, and his costs.

Respectfully submitted,
(Sgd.) BEAUMONT & TENNEY,
" THOS. D. AITKEN,
Attorneys for Appellants.

420 THE UNITED STATES OF AMERICA.
Philippine Islands:

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorables the Justices of the Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you or some of you, between Hartford Beaumont, Assignee of W. Borck, plaintiff and appellee, and Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the Estate of Benito Legarda, deceased, and Benito Valdes, defendants and

appellants, a manifest error has happened to the great damage of said plaintiff and appellee, Hartford Beaumont, Assignee of W. Borck, as by his complaint appears.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same to the
421 Supreme Court of the United States together with this writ, so that you may have the same in the City of Washington on the 17th day of September, 1916, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States — be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this twentieth day of May, in the year of our Lord one thousand nine hundred and sixteen.

[Seal of the Supreme Court of the Philippine Islands.]

(Sgd.) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

On the same day, May 20, 1916, the Honorable Grant T. Trent, Associate Justice of the Supreme Court of the Philippine Islands, entered an order allowing the said writ of error, as follows:

422 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDEZ, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Appellants.

Allowance of Writ of Error.

This 20th day of May, 1916, comes the plaintiff in the above-entitled cause, by his attorneys, and files herein and presents to the Court his petition praying for the allowance of a writ of error, and the assignment of errors intended to be urged by him, praying also that a sufficient transcript of the record and proceedings and papers, upon which the judgment herein was rendered, duly authenticated,

may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof, the Court does allow the writ of error, on plaintiff's giving bond according to the law, in the sum of One Thousand (₱1,000) pesos, Philippine Currency, which shall operate as a supersedeas bond.

Manila, P. I., May 20, 1916.

(Sgd.) GRANT T. TRENT,
Associate Judge, Supreme Court of the Philippine Islands.

423 The bond given by the plaintiff and appellee is as follows:

R. G. No. 8988.

THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands.

HARTFORD BEAUMONT, as Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Costs Bond.

Know all men by these presents that we, Hartford Beaumont, of Manila, as principal, and Walter Neumark and F. K. Schnitzler, of Manila, as sureties, are held and firmly bound unto the defendants herein, Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the Estate of Benito Legarda, deceased, and Benito Valdes, in the sum of One Thousand Pesos (₱1,000.00), Philippine currency, to be paid to the said defendants, to the payment of
424 which well and truly to be made we bind ourselves, our heirs, successors and administrators, jointly and severally by these presents.

Signed by us at Manila, this 24th day of November, 1916.

Whereas, lately, in the Supreme Court of the Philippine Islands, on the 30th day of March, 1916, in a suit pending in said Court, between Hartford Beaumont, as assignee of W. Borck and his creditors, plaintiff and appellee, and said Máuro Prieto et al., defendants and appellants, a decree was rendered against the said Hartford Beaumont, assignee, plaintiff and appellee, who subsequently having procured an appeal and filed a copy of the same in the office of the Clerk of said Court for reversal of the judgment rendered in said case, and the condition of the above obligation is such that if the said Hartford Beaumont, as assignee, shall prosecute said appeal to effect and an-

swer all damages and costs if he fails to make good his appeal, then this recognizance shall be null and void; otherwise, to remain in full force and effect.

(Sgd.) HARTFORD BEAUMONT (as Trustee),
Principal.

(Sgd.) W. NEUMARK, *Surety.*

(Sgd.) F. K. SCHNITZLER, *Surety.*

Signed in the presence of:

(Sgd.) N. SN. LUIS.

(Sgd.) A. V. VINOYO.

425 UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

Before me, at Manila, on this 24th day of November, 1916, personally appeared Hartford Beaumont, of Manila, and Walter Neumark of Manila, with cedula No. F-8082, issued by the Collector of Internal Revenue, at Manila, P. I., on the 10th of January, 1916; and F. K. Schnitzler, of Manila, with cedula No. F-22514, dated at Manila P. I., on the 18th of February, 1916, and executed and ratified the foregoing instrument, deposing upon oath that they executed the same as an act of their own free will and deed.

(Sgd.) IGNACIO SANTECO,
Notary Public.

My commission expires on December 31, 1916.

Doc. No. 94, Page 29, Reg. Not. I.

UNITED STATES OF AMERICA,
Philippine Islands, City of Manila, ss:

We, Walter Neumark and F. K. Schnitzler, of Manila, being first duly sworn upon oath, each for himself says and *deposses*: That he is really solvent for the amount stated in said obligation, to
426 wit: One Thousand Pesos (₱1,000.00) Philippine currency, apart from all his debts and obligations and property not subject to execution.

(Sgd.) W. NEUMARK.

(Sgd.) F. K. SCHNITZLER.

Subscribed and sworn to before me this 24th day of November, 1916, at Manila, Philippine Islands.

(Sgd.) IGNACIO SANTECO,
Notary Public.

My commission expires on December 31, 1916.

Doc. No. 95, Page 29, Reg. Not. I.

Thereafter and on the 10th day of January, 1917, the Honorable Grant T. Trent, Associate Justice of the Supreme Court of the Philippine Islands, issued citations in this case, which are in the words and figures following, to wit:

427 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Citation.

The President of the United States to Messrs. Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as Administrators of the Estate of Benito Legarda, Deceased, and Mr. Benito Valdes, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to an appeal duly allowed by
428 the Supreme Court of the Philippine Islands, and filed in the Clerk's Office of said Court on the 5th day of May, 1916, in a cause wherein Hartford Beaumont, Assignee of W. Borck, is plaintiff and appellee and you are defendants and appellants, to show cause, if any, why the decree rendered against said plaintiff and appellee, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10th day of January, A. D. 1917.

[Seal of the Supreme Court of the Philippine Islands.]

(Sgd.) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 10th day of January, 1917.

(Sgd.) GILBERT, COHN & FISHER,
Attorneys for the Defendants.

429 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Plaintiff in Error,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdez, Defendants and Defendants in Error.

Citation.

The President of the United States to Messrs. Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as Administrators of the Estate of Benito Legarda, Deceased, and Mr. Benito Valdes, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to a writ of error duly allowed
430 by the Supreme Court of the Philippine Islands, and filed in the Clerk's Office on the 20th day of May, 1916, in a cause wherein Hartford Beaumont, Assignee of W. Borck, is plaintiff in error and you are defendants in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10th day of *July*, (January, ?) A. D. 1917.

[Seal of the Supreme Court of the Philippine Islands.]

(Sgd.) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted, this 10th day of January, 1917.

(Sgd.) GILBERT, COHN & FISHER,
Attorneys for the Defendants in Error.

431 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,
vs.
MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc.,
Defendants and Appellants.

Now comes the plaintiff and appellee in the above entitled case, by his undersigned attorneys, and respectfully requests that an extension of ninety (90) days from the 10th day of May, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., May 5, 1917.

(Sgd.) HARTFORD BEAUMONT,
(Per T. D. A.)
(Sgd.) THOS. D. AITKEN.

Copy of this petition has been sent to Messrs. Cohn & Fisher, Attorneys for the defendants and appellants.

(Sgd.) THOS. D. AITKEN.

432 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,
versus
MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc.,
Defendants and Appellants.

In pursuance of the practice heretofore adopted in this jurisdiction in like cases, an extension of ninety days from the 10th day of May, 1917, for the transmission and filing of the record in this case in the office of the Clerk of the Supreme Court of the United States is allowed; and the application therefor having been submitted to this court on May 5, 1917, this order is issued as of the 10th day of May, 1917, notwithstanding its actual issuance and entry this 17th day of May, 1917.

Manila, P. I., May 17, 1917.

(Sgd.) A. C. CARSON,
Associate Justice, Acting in Vacation.

Service of a copy of the within order is hereby admitted, this 18th day of May, 1917.

COHN AND FISHER,
(Sgd.) CHARLES C. COHN,
Attorneys for Defendants and Appellants.

433 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc., Defendants and Appellants.

Now comes the plaintiff and appellee in the above-entitled case, by his undersigned attorneys, and respectfully requests that an extension of sixty (60) days from the 10th day of August, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., August 15, 1917.

(Sgd.) HARTFORD BEAUMONT.
" THOS. D. AITKEN.

Allowed:

(Sgd.) A. C. CARSON,
Associate Justice Supreme Court, P. I.

August 15, 1917.

434 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that the foregoing four hundred thirty-three (433) typewritten pages (composed of Parts I and II) contain a true and correct translation and transcript of the record and proceedings in the Court of First Instance of Manila, Ninth Judicial District, and in the Supreme Court of the Philippine Islands in the case entitled Hartford Beaumont, Assignee of W. Borck, plaintiff and appellee, versus Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, defendants and appellants, bearing No. 8988 on the docket of this Supreme Court.

In Witness Whereof, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this fifth day of September, A. D. one thousand nine hundred seventeen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

435 THE UNITED STATES OF AMERICA:

Supreme Court of the Philippine Islands, April 24, 1916.

File No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 30th day of March, A. D. nineteen hundred and sixteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 13th day of February, 1913, and from which the above-entitled appeal was taken, be, and the same is hereby reversed, absolving the defendants from the complaint. The costs of first instance shall be imposed upon the plaintiff. No special finding is made with respect to those of this second instance.

[Seal Corte Suprema, Islas Filipinas.]

(Sgd.) V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

Certified Correct:
V. ALBERT,
Clerk of the Supreme Court
of the Philippine Islands.

ar.

436 R. G. No. 8988.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

The above named plaintiff, conceiving himself aggrieved by the decree made and entered on the 24 day of April, 1916, in the above entitled case, does hereby appeal from said order and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors which is filed herewith; and prays that this appeal may be allowed, and that a transcript of the record, proceedings and papers, upon which the said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Manila, P. I., May 5, 1916.

BEAUMONT & TENNEY,
THOS. D. AITKEN,
Attorneys for Plaintiff.

The foregoing claim of appeal is allowed.

GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

437 R. G. No. 8988.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Petition for Writ of Error.

To the Honorable Justices of the Supreme Court of the United States:

Comes now the above named plaintiff, by his attorneys, and complains that in the record and proceedings had in said cause, and also

in the rendition of the judgment in the above entitled cause in the Supreme Court of the Philippine Islands against the said plaintiff, on the 24 day of April, 1916, manifest error hath happened, to the great damage of the said plaintiff.

Wherefore, said plaintiff prays for the allowance of a writ of error in said cause, and for such other orders and process as may cause same to be corrected by the said United States Supreme Court.

Manila, P. I., May 5, 1916.

BEAUMONT & TENNEY,
THOS. D. AITKEN,
Attorneys for Plaintiff.

Allowed this 20 day of May, 1916.
GRANT T. TRENT,
Associate Justice Supreme Court of the Philippine Islands.

438

R. G. No. 8988.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Assignment of Errors.

Appellants in the above entitled case, in connection with their petition for appeal and writ of error herein, present and file herewith their assignment of errors as to the matters and things in which they say the decree entered herein on the 24 day of April, 1916, is erroneous, to wit:

I.

The Court erred in holding that the offer to sell the Hacienda de Nagtahan, set out in the amended complaint, and introduced in evidence as Exhibit "E," had not been accepted by the original plaintiff.

II.

The Court erred in holding that Exhibit "G" was not a full and complete acceptance of said offer.

439 III.

The Court erred in holding that under the terms of Exhibit "G" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

IV.

The Court erred in holding that Exhibit "J" was not a full and complete acceptance of said offer.

V.

The Court erred in holding that under the terms of Exhibit "J" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

VI.

The Court erred in holding that Exhibit "K" was not a full and complete acceptance of said offer.

VII.

The Court erred in holding that under Exhibit "K" the delivery of a satisfactory deed and the payment of the full purchase price in cash were to be other than simultaneous acts.

VIII.

The Court erred in holding that the appellants might rely upon the alleged error of the Court below in sustaining their own objection to the introduction of Exhibit "F.".

IX.

The Court erred in holding that Exhibit "F" was other than the original of a letter written by plaintiff but never signed, delivered, or communicated to the defendants.

440 X.

The Court erred in holding that Exhibit "F" is a copy instead of an original.

XI.

The Court erred in holding that the acceptance attempted by the original plaintiff in Exhibit "F" was not subsequently wholly abandoned, and the acceptance therein set forth had not been completely substituted, by a later and valid act.

XII.

The Court erred in failing to find that at the time of filing this suit there was not a binding and valid contract for the conveyance of real estate, between the parties.

XIII.

The Court erred in revoking the decision of the Court below and failing to award to plaintiff specific performance, and accounting, and his costs.

Respectfully submitted,

BEAUMONT & TENNEY,
THOS. D. AITKEN,
Attorneys for Appellants.

441 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorables the Justices of The Supreme Court of the Philippine Islands, Greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a cause which is in said Supreme Court of the Philippine Islands, before you or some of you, between Hartford Beaumont, Assignee of W. Borck, plaintiff and appellee, and Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the Estate of Benito Legarda, deceased, and Benito Valdes, defendants and appellants, a manifest error has happened to the great damage of said plaintiff and appellee, Hartford Beaumont, Assignee of W. Borck, as by his complaint appears.

We, being willing that the error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid with all things concerning the same
442 to the Supreme Court of the United States together with this writ, so that you may have the same in the City of Washington on the 17th day of September, 1916, in said Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and custom of the United States — be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this twentieth day of May, in the year of our Lord one thousand nine hundred and sixteen.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

Ar.

443

R. G. No. 8988.

UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Allowance of Writ of Error.

This 20 day of May, 1916, comes the plaintiff in the above entitled cause, by his attorneys, and files herein and presents to the Court his petition praying for the allowance of a writ of error, and the assignment of errors intended to be urged by him, praying also that a sufficient transcript of the record and proceedings and papers, upon which the judgment herein was rendered, duly authenticated, may be sent to the Supreme Court of the United States, and that such other and further proceedings may be had as are proper in the premises.

In consideration whereof, the Court does allow the writ of error, on plaintiff's giving bond according to the law, in the sum of one thousand (₱1,000) — Philippine Currency, which shall operate as a supersedeas bond.

Manila, P. I., May 20, 1916.

GRANT T. TRENT,
Associate Judge Supreme Court of the Philippine Islands.

444 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Appellants.

Citation.

The President of the United States to Messrs. Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as Administrators of the Estate of Benito Legarda, Deceased, and Mr. Benito Valdes, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's
445 Office of said Court on the 5th day of May, 1916, in a cause wherein Hartford Beaumont, Assignee of W. Borck, is plaintiff and appellee and you are defendants and appellants, to show cause, if any, why the decree rendered against said plaintiff and appellee, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10 day of July, A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 10th day of January, 1917.

GILBERT, COHN & FISHER,
Attorneys for the Defendants.

446 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

G. R. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Plaintiff in Error,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as Administrators of the Estate of Benito Legarda, Deceased, and Benito Valdes, Defendants and Defendants in Error.

Citation.

The President of the United States to Messrs. Máuro Prieto, Benito Legarda, Jr., and Benito Valdes, as Administrators of the Estate of Benito Legarda, Deceased, and Mr. Benito Valdes, Manila, P. I., Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the Clerk's
447 Office on the 20th day of May, 1916, in a cause wherein Hartford Beaumont, Assignee of W. Borck, is plaintiff in error and you are defendants in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10 day of Jany., A. D. 1917.

[Seal Corte Suprema, Islas Filipinas.]

GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

Service of a copy of the within citation is hereby admitted this 10th day of January, 1917.

GILBERT, COHN & FISHER,
Attorneys for the Defendants in Error.

Ar.

Extended until Aug. 9, 1917.

448 Supreme Court, Philippine Islands, Clerk's Office. Filed May 9, 1917, 8.20 A. M.

THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

vs.

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc., Defendants and Appellants.

Now comes the plaintiff and appellee in the above-entitled case, by his undersigned attorneys, and respectfully requests that an extension of ninety (90) days from the 10th day of May, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., May 5, 1917.

HARTFORD BEAUMONT,
Per T. D. A.
THOS. D. AITKEN,
Attorneys for the Plaintiff and Appellee.

Copy of this petition has been sent to Messrs. Cohn & Fisher, Attorneys for the defendants and appellants.

THOS. D. AITKEN.

449 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc., Defendants and Appellants.

In pursuance of the practice heretofore adopted in this jurisdiction in like cases, an extension of ninety days from the 10th day of May, 1917, for the transmission and filing of the record in this case in the office of the Clerk of the Supreme Court of the United States is allowed; and the application therefor having been submitted to this court on May 5, 1917, this order is issued as of the 10th day of May,

1917, notwithstanding its actual issuance and entry this 17th day of May, 1917.

A. C. CARSON,
Associate Justice, Acting in Vacation.

Manila, P. I., May 17, 1917.

Service of a copy of the within order is hereby admitted, this 18 day of May, 1917.

COHN AND FISHER,
CHARLES C. COHN,
Attorneys for Defendants and Appellants.

450 THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

R. G. No. 8988.

HARTFORD BEAUMONT, Assignee of W. Borck, Plaintiff and Appellee,

versus

MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, etc., Defendants and Appellants.

Now comes the plaintiff and appellee in the above-entitled case, by his undersigned attorneys, and respectfully requests that an extension of sixty (60) days from the 10th day of August, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

Manila, P. I., August 15, 1917.

HARTFORD BEAUMONT,
THOS. D. AITKEN,
Attorneys for the Plaintiff and Appellee.

Allowed,
A. C. CARSON,
Associate Justice, Supreme Court, P. I.

Aug. 15, '17.

Copy of this petition has been sent to Messrs. Cohn & Fisher, Attorneys for the defendants and appellants.

Endorsed on cover: File No. 26237. Philippine Islands Supreme Court. Term No. 770. Hartford Beaumont, assignee of W. Borck, appellant and plaintiff in error, vs. Mauro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the estate of Benito Legarda, deceased, and Benito Valdes. Filed November 21st, 1917. File No. 26237.

Office Supreme Court, U. S.
FILED
JUN 3 1918
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 303

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, APPELLANT AND PLAINTIFF IN ERROR,

vs.

MAURO PRIETO ET AL., APPELLEES AND DEFENDANTS IN ERROR.

Brief of Appellant and Plaintiff in Error on Motion to Dismiss or Affirm.

T. T. ANSBURY,
JOSEPH D. SULLIVAN,
Attorneys for Appellant.

THE LAW REPORTER PRINTING COMPANY, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1917.

No. 770.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, APPELLANT AND PLAINTIFF IN ERROR,

vs.

MAURO PRIETO ET AL., APPELLEES AND DEFENDANTS IN ERROR.

Brief of Appellant and Plaintiff in Error on Motion to Dismiss or Affirm.

The basis of the motion to dismiss or affirm is divisible into two parts. The first that the appeal was not perfected "within the same term of court" at which it was taken; the second, that the extension of time granted by the Supreme Court of the Philippine Islands was not regularly granted.

The answer to the first contention is that the objection is based on rules of this court long since repealed and changed.

The answer to the second contention is that the extensions of time were within the discretion of the court, and its acts in regard to extension of time within which the record might be filed in this court, when made in accordance with the rules of this court, will not be controlled, except where it is in the interest of justice,

or a disregard of the rules of this court by the lower court is apparent.

A large part of the brief of appellees' counsel is based upon the supposition that this court lacks jurisdiction to entertain this appeal. It was settled in the case of Grigsby *vs.* Purcell, 99 U. S., 505, that the real objection is not the lack of jurisdiction, but that the failure to prosecute the suit deprives an appellant of his right to a hearing.

It is respectfully submitted that the certificate printed in appellees' brief, pages 14 et seq., is no part of the record in this case, does not purport to contain all the proceedings in the case, is not a certificate such as is contemplated upon a motion to docket and dismiss, and so far as it goes shows no irregularity in granting the extensions of time complained against.

Under the rules of this court the judge of the court allowing the appeal has been given sound discretion in the extension of time, and he is best able to judge whether or not the time should be enlarged. When it appears to him that the granting of additional time would be in the interest of justice, we submit, that this court will not overrule the exercise of his discretion in this matter, in the absence of some apparent irregularity or abuse of discretion on his part.

The appellees had a full remedy by motion to docket and dismiss this cause, if their contention is correct. They failed to avail themselves of this remedy. The case was docketed and record was filed with the clerk of this court on November 21st, 1917. The motion to dismiss or affirm was made June 3d, 1918, after notice thereof given May 13th, 1918. They have not complied with the rules of court. No motion to docket and dismiss was made by them. They have delayed making this motion to dismiss or affirm until the close of the term, when the court is occupied with many important

matters incidental to the adjournment for the vacation. They have waited until after the cause had been docketed, the record printed and their general appearance entered by the counsel for appellees.

The rules of this court applying to the taking of appeals, extension of time, docketing of causes are designed to expedite hearings and eliminate undue delay, so that parties who fail to prosecute their appeals may lose the benefit of them. In this case there has been no failure to prosecute the appeal, and any technical defect which may have existed, so far as appellees are concerned, has been waived by them, for the reasons herein stated, and so far as this court is concerned, may well be pardoned in view of the difficulties existing in the Philippine Islands in taking appeals to this court, and the fact that the record is printed and the case ready for hearing on its merits.

The importance of the cause, the delay of appellees in making the motion, the fact that the court of first instance decided the cause in favor of the appellant, the large amount involved, the fact that it is a case coming to this court from the Philippine Islands, the near approach of the end of the term, and the time when the case will be for hearing on its merits impels counsel for the appellant to suggest to the court that the hearing of the motion to dismiss or affirm be postponed until the hearing of the case upon its merits.

Respectfully submitted.

T. T. ANSBURY,
JOSEPH D. SULLIVAN,
Attorneys for Appellant.

MAR 7 1919
JAMES D. MAHER,
CLERK.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 303.

HARTFORD BEAUMONT, Assignee of W. BORCK, *Appellant and Plaintiff in Error,*

vs.

MAURO PRIETO, *et al., Appellees and Defendants in Error.*

BRIEF OF APPELLANT AND PLAINTIFF IN ERROR.

T. T. ANSBERRY,
JOSEPH D. SULLIVAN,
Attorneys for Appellant.

BEAUMONT & TENNEY,
THOS. D. AITKEN,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1918.

No. 303.

HARTFORD BEAUMONT, Assignee of W. BORCK, *Appellant and Plaintiff in Error,*

vs.

MAURO PRIETO, *et al., Appellees and Defendants in Error.*

BRIEF ON BEHALF OF APPELLANT AND PLAINTIFF IN ERROR.

STATEMENT OF FACTS.

This appeal is from the judgment of the Supreme Court of the Philippine Islands, entered in a suit by the assignor of the appellant and plaintiff in error for specific performance of a contract to sell a large tract of land known as the Nagtahan Hacienda, which was registered under the Torrens system, and was of an assessed value of P. 307,000, Philippine currency ($153,500, United States currency).

There was an alternate prayer for damages to the amount of $760,000, should specific performance of the contract be refused.

Benito Legarda was the owner of the Nagtahan Hacienda and during his absence from the Philippine Islands, had appointed Benito Valdez as his attorney-in-fact, with authority to sell land, by a formal power of attorney (R., 4). The first step in the negotiation for sale of the property was that Benito Valdez granted to W. Borck an "opportunity to realize the purchase" of a portion of the Nagtahan estate within 3 months, by a communication, which was dated December 17, 1910; Plaintiff's Exhibit "A" (R., 91). No sale resulted from this option.

On December 4, 1911, Benito Valdez, acting under his power of attorney from Legarda, gave to W. Borck an option for the purchase of this land designated Plaintiff's Exhibit "E" (R., 93), which read as follows:

> "Mr. W. Borck, Real Estate Agent, Manila, P. I.
>
> Sir: In compliance with your request I herewith give you an option for 3 months to buy the property of Mr. Benito Legarda known as the Nagtahan Hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed goverment valuation.
>
> B. VALDES."

By its terms this option would not expire until the fourth of March 1912.

The record contains what is marked as Exhibit "F," (R., 93), which purports to be a letter from Borck to Valdez, offering to purchase the land and to make payment in cash on May 1, 1912. When this writing was offered in evidence objection was made to it by attorneys for Valdez and Legarda, and the trial court reserved its ruling, but subse-

quently refused to consider it. It was, however, considered to be evidence by the Supreme Court upon the hearing on appeal and their discussion of it will be found in their decision (R., 187-191). The bearing of this writing upon the case is discussed at page 18 of this brief where additional facts with regard to it are stated.

On January 19, 1912, Borck wrote to Valdez the letter set out as Plaintiff's Exhibit "G" (R., 94):

> "Manilla, P. I.,
> January 19, 1912.
>
> Dr. Benito Valdez, 195 San Sebastian, City.
>
> Sir: I hereby advise you that I am ready to purchase the hacienda Nagtahan situated in the districts of Sampaloc and Nagtahan, Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000) pesos, Ph. C., the price quoted in the option given me by you.
>
> Full payment will be made on or before the third day of March, 1912, provided all documents in connection with the hacienda Nagtahan, as Torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.
>
> Very truly yours,
> W. BORCK."

Valdez had not written to Borck subsequent to the fourth of December, 1911 (the date of the option), and on January 23, 1912, Borck again wrote him as follows:

> "January 23, 1912.
>
> Dr. Benito Valdez, 195 Calle San Sebastian, City.
>
> Sir: I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount

of purchase price, three hundred and seven thousand 307,000) pesos, Ph. C., ten days after the Torrens title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and those documents and papers have been found in good order.

Respectfully yours,"

This letter is set out as Plaintiff's Exhibit "J" (R., 94). Thereafter no communication was received from Valdez, but he refused to make the conveyance. On March 13, 1912, a complaint was filed by Borck, which was the initial step in the proceeding now before this court. In the complaint both Benito Legarda and Benito Valdez were made parties defendant.

Subsequently Hartford Beaumont became assignee of all of Borck's interests and was substituted by order of court for the original plaintiff (R., 26). In the court of first instance a decree for the plaintiff was entered (R., 33), and the defendants appealed separately. On appeal to the Supreme Court of the Philippine Islands, the decision of the trial court was reversed, and the case is before this court on appeal and writ of error.

Assignment of Errors Relied Upon.

I.

The Court erred in holding that the offer to sell the Hacienda de Nagtahan, set out in the amended complaint, and introduced in evidence as Exhibit "E," had not been accepted by the original plaintiff.

II.

The Court erred in holding that Exhibit "G" was not a full and complete acceptance of said offer.

IV.

The Court erred in holding that Exhibit "J" was not a full and complete acceptance of said offer.

VI.

The Court erred in holding that Exhibit "K" was not a full and complete acceptance of said offer.

VIII.

The Court erred in holding that the appellants might rely upon the alleged error of the Court below in sustaining their own objection to the introduction of Exhibit "F."

XII.

The Court erred in failing to find that at the time of filing this suit there was *not* a binding and valid contract for the conveyance of real estate between the parties.

These assignments are directed to various conclusions reached by the Court in its decision of the case and are equivalent to an assignment that the Court erred in finding that there was no contract between the parties by reason of a lack of mutual assent.

ARGUMENT.

Assignment of Errors No. I, II, and XII.

I.

The Court erred in holding that the offer to sell the Hacienda Nagtahan set out in the amended complaint and introduced in evidence as Exhibit E had not been accepted by the original plaintiff.

II.

The Court erred in holding that Exhibit G was not a full and complete acceptance of said offer.

XII.

The Cour erred in failing to find that at the time of filing this suit there was a binding and valid contract for the conveyance of real estate between the parties.

As there could be no contract without an acceptance of the offer contained in the letter of December 4, 1911, the question here presented is: Was there a full, complete and unequivocal acceptance or was the acceptance a conditional one.

It was found by both trial and appellate courts that Valdez did not withdraw the option prior to its termination (R., 181).

The words of the option were: "In compliance with your request, I herewith give you an option for three months to buy the property of Mr. Benito Legarda, etc." This did not expire until of the fourth day of March, 1912. It was a continuing offer of the sale of the land.

> "Undoubtdly, if the offerer gives a day for acceptance, without consideration for the delay, he may at any time within that day, before acceptance, recall his offer. So he may if he gives no time. If he makes an offer, and instantly recalls it before acceptance, although the other party was prepared to accept it the next instant, the offer is effectually withdrawn. But acceptance before withdrawal binds the parties, if made while the offer continues, and the offer does continue in all cases, either a reasonable time (and that only), or the time fixed by the party himself."
>
> 1 Parsons on Contracts, 482.

By his letter of January 19, 1912, the plaintiff in error accepted the offer to sell him the land in these words:

Manila, P. I., January 19, 1912.

Dr. Benito Valdez, 195 San Sebastian, City.

Sir: I hereby advise you that I am ready to purchase the hacienda Nagtahan situated in the districts of Sampaloc and Nagtahan, Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March, 1912, provided all documents in connection with the hacienda Nagtahan, as Torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.

Very truly yours,

W. BORCK.

This letter is divided into two paragraphs. The first constitutes a full, clear and unequivocal acceptance of the option granted. It is admitted that the sum of P. 307,000.00 is the assessed government valuation. The offer of December 4, 1911, to sell is by this acceptance converted into a contract, unless in the meantime something had occurred to withdraw or render ineffective the original offer.

The second paragraph has nothing whatever to do with acceptance, it deals entirely and solely with performance. It introduces no element of qualification in the acceptance. It proposed a payment within the time allowed for the acceptance of the offer contained in the option, and the proviso that the title papers and leases be immediately placed at the disposal of the purchaser for his examination had only to do with performance of the contract and involved no variation from the terms of the offer. While the time at which the purchaser proposed to make payment is stated it is not made a condition of the acceptance and no at-

tempt is made to restrain or cut down the positive, unqualified acceptance made in the same instrument.

NO NEW TERM WAS ADDED BY THE PROVISO, IF IT MERELY CALLED FOR WHAT THE PURCHASER WOULD HAVE BEEN ALLOWED BY IMPLICATION OF LAW.

The offer contained a fixed date, namely, March 4, to which it was to remain open. The trial court took the view that the purchaser had until that day to make payment for the land (R., 84). The judge, in his opinion, said:

> "It is our duty so to construe contracts as to make the parties mean what they say, and when one of them gives an 'option for 3 months' we must understand him to allow that full period in which to comply with the option or, in other words, to pay the price. If the plaintiff had tendered no acceptance of any kind until March 4, and the option had not meanwhile been revoked, will any one deny that a contract would have resulted? And was it any less advantageous to the defendant for plaintiff to accept on January 19, at the same time availing himself of the balance of the three months for payment. Plaintiff testifies that defendant Valdez, before signing the option, said, 'I don't want you to put in the assessed valuation, in figures, because you have 3 months' option, and in that 3 months the Government might raise or lower the assessment.' "

The Appellate Court held that the moment instruments were executed and signed by the vendor, he would be entitled to an immediate cash payment and, further, that by the acceptance of Borck payment of the price was not to be paid at once or in cash (R., 182-186).

Of course, if the effect of the option was to specify the time within which payment was to be made, viz., 3 months, then the offer was accepted in accordance with its terms.

But even if the offer should be construed to be an option to be accepted within 3 months, but not to fix the 3 months as the period for the payment of the purchase price; then the most that can be claimed by the vendor is that it was an agreement to sell in which no time for the performance was specified. It has been well established in this court that under contracts for sale where no time for performance is specified, the purchaser has a reasonable time in which to tender performance or make excuse therefor.

Beardsley vs. Beardsley, 138 U. S., 262.
Minneapolis Co. vs. Columbus Co., 119 U. S., 149.

Treating, therefore, the letter of December 4, as merely an agreement to sell, fixing no time for performance, Borck had a reasonable time within which to perform or make excuse therefor after he had agreed to purchase the land, if indeed it was not incumbent upon the vendor to tender a deed to him.

The offer to sell contained no provision for the condition of the title, and an offer to sell land at a sound price which does not make express provision for the condition of the title to be conveyed, by implication refers to a marketable title.

Curtis Land, etc., Co. vs. Interior Land Co., 135 Wis., 341;
Wright vs. Young, 6 Wis., 127; 70 Am. Dec., 453;
Arentsen vs. Moreland, 122 Wis., 167; 106 Am. St. Rep., 951; 65 L. R. A., 973;
Dwight vs. Cutler, 3 Mich., 566; 64 Am. Dec., 105;
Sibley vs. Spring, 12 Me., 460; 28 Am. Dec., 191;
Bartle vs. Curtis, 68 Iowa, 202;
Meyer vs. Madreperla, 68 N. J. L., 258; 96 Am. St. Rep., 536.

It logically follows that having the right to a marketable title, the reasonable time for performance of the contract

on Borck's part was such time as would be necessary for a proper examination to determine if the vendor had a marketable title, and when that was determined, to close the transaction by a payment in cash. To ascertain if the title tendered was a marketable title he had the right to look for defects that might exist, and as such defects might exist in the deed under which he was to take title, or in leases or other papers relating to the land, it was entirely proper for him to specify that such papers should be submitted to him for his examination. The parties must have intended the customary examination of title. The law allowed, by implication, the right to ascertain that he was purchasing a marketable title, and the proviso that all documents be placed at his disposal for inspection was merely a statement of what he could have required, if no such statement had been made by him. Furthermore, in order to satisfy himself as to whether the title was a marketable one he was by law allowed a reasonable time. The second paragraph of the letter of January 19, referring to full payment on or before the third day of March, should be regarded in no other light than as a preliminary step by the purchaser to reach an agreement with the seller as to what constituted a reasonable time under the circumstances of the case. A reasonable time is an elastic quantity, and varies with the circumstances, and a suggestion of March 3, as a reasonable time can not, without violence, be construed to be a rejection of Valdez's offer.

Citation of Cases as Precedents.

We have collected several cases as precedents on the point involved. In Rider vs. Johnson, 153 Ala., 482, the owner offered to sell land for a certain price and the prospective purchaser offered to pay "provided the title was good," it was held that the proviso in the acceptance being merely the

proviso which the law would attach, did not defeat the contract.

In Curtis Land Co vs. Interior Land Co., 135 Wis., 341, the acceptance of the offer was in these words:

> "Your favor of the 12th instant received. We will take your S. W. S. W. 6, 35, 8; Lincoln County, Wisconsin, for your cash price of $6.00 per acre. Your records probably show the acreage, which is 22.30 acres. If it is just as satisfactory to you, will you please send your deed to National Bank of Merrill for collection. Kindly have it made out to Curtis Land and Loan Co., a Wisconsin Corporation.
>
> We note that this description was sold in 1903 and 1904 to F. J. Smith for delinquent taxes. Please take care of the taxes."

The Court said:

> "Where the letter of acceptance contains a mere suggestion or request that payment be made at a particular place, but such a request is not a condition attached to the acceptance, it does not amount to an attempt to vary the terms of the offer to sell, and will not defeat an action for specific performance."

In the case of Hussey vs. Horn-Payne, 4 App. Cases, 311; 48 L. J. Ch., 846; the case was decided upon the point that the full contract had not been reduced to writing in compliance with the statute of frauds, but Lord Cairns, in his opinion, rejected the contention that the words in an acceptance "subject to the title being approved by our solicitor," introduced a new term into the contract. He said:

> "I am disposed to look upon the words as meaning nothing more than a guard against it being supposed

that the title was to be accepted without investigation, as meaning in fact that the title must be investigated and approved of in the usual way, which would be by the solicitor of the purchaser."

In Martin vs. Fuel Co., 22 Fed. Rep., 596, an offer of coal for sale was made and a telegram in answer was sent, "You can consider the coal sold. Will be in Cleveland next week and arrange particulars." This was held to be an unequivocal and unqualified acceptance.

The best considered cases which present a state of facts similar to the facts in the case at bar are those of Horgan vs. Russell, 24 N. D., 490; 43 L. R. A. (N. S.), 1153, and Turner vs. McCormick, 56 W. Va., 161; 68 L. R. A., 853; 107 Am. St. Rep., 904. In the case of Horgan vs. Russell the Court, in a lengthy opinion in which a number of cases are cited, distinguishes between the acceptance and the performance of the contract. The Court, in its opinion, said:

"In option contracts, as in all contracts, acceptance is one thing, performance another and different thing; and what has heretofore been said has particular reference to the former. The cases and textbook writers distinguish in actions for specific performance, between acceptance and performance, and the necessity for this distinction is well exhibited by the two written instruments now being considered, the so-called option and its notice of acceptance. The option itself granted 'an option for thirty days * * * to purchase for the sum of $1,600.00 the following described lands,' and that its acceptance should be made by plaintiffs signifying their 'intention to take or reject the same by due notice in writing within this time above specified, * * * time being the essence of this agreement.' This constituted a complete offer to sell within the period named. There is a stipulated method of, and time within which acceptance shall be made, or the

right to make acceptance shall end. And the option contract further provides in the last paragraph thereof, in a general way, for performance after acceptance, by the stipulation, 'In case said notice shall be served in due time, then thirty days shall be given in which to examine abstract, make deeds, and close sale.' We find, then, the written offer tendered plaintiffs provides for both acceptance and subsequent performance. This is important when we consider the optionees' rights and privileges under the option, and that it would be but natural and reasonable for the optionees, inasmuch as the option concerned both its acceptance and subsequent performance, to make mention in the written acceptance of the option of some notification or offer concerning its subsequent performance. In fact, the last paragraph of the option practically invites some suggestion, offer, or notification concerning readiness, ability, time, or manner of performance to 'close sale.' Such we find to have been in the minds of the plaintiffs at the time of the preparation of the notice of acceptance, as is clearly apparent from it. The first two paragraphs of this notice constitute an unequivocal, unconditional, positive, and plain acceptance strictly as stipulated for in the option. The acceptance reads: 'You are hereby notified that, pursuant to the option contract, a copy of which is hereto annexed and made a part of this notice, that I. A. Smith and J. E. Horgan do hereby signify their intention to take the land described therein, and herein described as follows.' A more definite acceptance could not be drawn. Then we notice that plaintiffs, evidently with reference to the last paragraph of the option concerning performance, inserted in the notice the last two paragraphs referring to time, place, and manner of performance, making therein a proposition concerning the same, and terminating the instrument with, 'You will please accept or reject this proposition at once, and complete the transaction according to the terms of said contract.' It is true they 'hereby demand an abstract and deed of said land,' and it is equally certain that, as to the

abstract demanded, plaintiffs had no right to demand the same, nor was the optioner, Haas, obliged to furnish an abstract. But such demand pertained, not to the acceptance, but to performance after acceptance. In order for this demand to invalidate the acceptance, it must amount to a qualification or condition imposed as a part of the acceptance itself. In other words, it must amount in this case to a qualified acceptance to the effect that optionees 'do hereby signify their intention to take the land described therein, provided or upon condition that optionor, in addition to a deed, furnish an abstract of title to said premises.' Such is not the construction to be placed upon the acceptance, nor was it the intent of the optionees to make the acceptance conditional upon the furnishing of an abstract. On the contrary, the acceptance was specific, certain, and unconditional. The demand for an abstract was made in reference to what should happen during the thirty-day period after the option became, as it did, a contract of sale and as to performance during said period of said executory contract."

This demand for the abstract is much nearer a qualification of the acceptance than anything contained in Borck's acceptance.

The case of Horgan vs. Russell, quotes with approval Turner vs. McCormick, 56 W. Va., 161; 68 L. R. A., 853; 107 Am. St. Rep., 904, where it was said:

"Acceptance of a formal and carefully prepared option of said sale of land within the time by it allowed, and according to its terms, although accompanied by a request for a departure from its terms as to the time and place of performance, is an unconditional acceptance, and converts the option into an executory contract of sale, provided the request be not so worded as to limit or qualify the acceptance."

In Breen vs. Mayne, 141 Iowa, 399, it was said:

"The only fixed rule regarding the manner of the exercise of an option under a contract granting it is to discover from the language of the instrument, construed in the light of competent parole testimony the intent of the parties with reference thereto. It maybe that, under the terms of a given option the only proper and binding method of election or acceptance is by the payment or a tender of the purchase price. On the other hand, there are many cases where the option may be exercised in parole or by any other method indicating an election to take the land; the payment of the purchase price and the making of the deed being subsequent matters in performance of a binding contract. In the one case there is an election to sell upon payment of the purchase price which is a condition precedent to the foundation of the contract, and on the other there is an election to take the land upon the terms proposed; payment of the purchase price being a condition subsequent, or rather the performance of an executory contract theretofore entered into."

In the light of these authorities it seems conclusive that the intention of Borck, manifest from the letters in evidence was to make an unqualified and complete acceptance of the proposal made by Valdez, and that the suggestions relating to the time of payment, and the submission of instruments of title, were not conditions imposed upon the acceptance, to which they had no direct reference, but were subsequent matters of performance of the contract made binding on both parties by such acceptance. Suppose the action were against Borck upon this acceptance, would he be heard to say that he was not bound in the face of his positive language, for the reason that the subsequent paragraph made his letter a rejection of the offer? Yet if it would bind one, it must bind both.

Delivery of Deed Did Not Necessitate Simultaneous Payment.

One of the points upon which the Appellate Court based its decision was its holding that the vendor was entitled to an immediate payment upon delivery of the deed and that the request for delivery of the Torrens title deed made in Borck's letter of acceptance required the delivery of the deed but postponed the time for payment until long after the deed had been delivered. It is submitted that the Court was wrong in its interpretation of the request for the deed.

The delivery of deeds and other papers for inspection is quite different from a delivery for the purpose of passing title. In as much as the land in question was subject to the Torrens law (Act 496), the execution of a deed and its delivery even if we should assume that the provision of Borck's acceptance was intended to require the delivery of an executed deed did not pass any title to the land.

Section 50 of Act 496 reads as follows:

> "An owner of registered land may convey, mortgage, lease, charge, or otherwise deal with the same as fully as if it had not been registered. He may use forms of deeds, mortgages, leases, or other voluntary instruments like those now in use sufficient in law for the purpose intended. But *no deed*, mortgage, lease, or other voluntary instrument, except a will, purporting to convey or affect registered land, *shall take effect as a conveyance or bind the land, but shall operate only as a contract* between the parties and as evidence of authority to the clerk or register of deeds to make registration. The act of registration shall be the operative act to convey and affect the land, and in all cases under this Act the registration shall be made in the office of register of deeds for the province or provinces or city where the land lies."

While the Philippine Supreme Court laid stress on the fact that Borck was to pay the price at the very moment

that the deed was delivered; delivery of a deed for the purposes of inspecting it would not require immediate payment of the purchase money. It appears clear moreover that Borck's intention was merely to have an examination of title and did not necessarily require that the executed deed be delivered to him or, if it did, such a delivery only for inspection, and this would not be a delivery which would pass title.

Graves vs. Dudley, 20 N. Y., 77.
Brackett vs. Barney, 28 N. Y., 333.
Puckett vs. Williams, 11 Tex. Civ. App., 308; 32 S. W., 364.
Curry vs. Colburn, 99 Wis., 319; 74 N. W., 778.

ASSIGNMENT OF ERROR NO. IV.

"The Court erred in holding that Exhibit 'J' was not a full and complete acceptance of the offer."

Exhibit "J" set out on page 93 of the record was a letter from Borck to Valdez dated the twenty-third of January, 1912, in which he advised Valdez that he would complete the purchase of the land ten days after Torrens' title deeds and all papers had been placed at his disposal and found in good order. This treats the question of acceptance as already accomplished and that both parties were bound by an existing contract, which was tantamount to saying "it will require ten days to examine title and papers in order to determine whether the title is marketable, and if it is we will pay the purchase price at once." It was an indirect reiteration by the plaintiff of his acceptance of the offer to sell and a concrete expression by him of what he believed to be the shortest time within which the necessary precautions for the purpose of ascertaining whether he had a marketable

title could be taken and the payment of the purchase price made.

It is significant that neither the letter of January 19, or the letter of January 23, produced any communication from Valdez. He had given an option to run for three months. He had not withdrawn that option and he remained quiet, apparently acquiescent in the acceptance of the offer, and in the suggestion of Borck defining the limit of the reasonable time within which he was entitled to make performance.

ASSIGNMENT OF ERROR NO. VI.

> "The Court erred in holding that Exhibit 'K' was not a full and complete acceptance of said offer."

Exhibit "K" was a letter from Borck to Valdez dated February 28, advising Valdez that the purchase price was ready to be paid when the papers were put at his disposal for inspection (R., 94). Nothing had been done by Valdez prior to that date showing any intention on his part to withdraw the offer. Exhibit "K" was an actual tender of the purchase price.

ASSIGNMENT OF ERROR NO. VIII.

> "The Court erred in holding that the appellants might rely upon the error of the court below in sustaining their own objection to the introduction of Exhibit 'F.'"

It appears that when this exhibit was offered in evidence while the witness Valdez was under examination (R., 113). He was asked to identify copies of letters by counsel for the plaintiff, which were marked Exhibits "F," "G," "J," "K," "L," and "M." Instead of identifying these the witness

replied that he had three original letters from Mr. Borck and two from Mr. Beaumont, and thereupon produced the originals of Exhibits "C," "M," "L," "K," and "G." Subsequently when the plaintiff Borck was under examination (R., 118) his attorney offered in evidence all exhibits from "A" to "M" which were identified by the preceding witness (Valdez); whereupon counsel for the defendants Legarda and Valdez entered objection to the admission of the documents and the Court reserved its decision. A considerable part of the decision of the Philippine Supreme Court is devoted to a consideration of this Exhibit "F" and whether it was properly before the Court, and the conclusion is reached that the Trial Court erred in not admitting in evidence Exhibit "F," and consequently in not taking it in consideration in the decision appealed from.

It is respectfully submitted that after the defendants at the trial (Legarda and Valdez) had objected to the introduction of Exhibit "F" as evidence in the case, had failed to produce the original of which it was at most a carbon copy, if such an original existed, and having removed from the attention of the Trial Court any idea that they relied upon Exhibit "F" to sustain their position as defendants, they should not be permitted to secure a reversal of the trial upon the ground that the Court erred in not admitting the exhibit in evidence over their own objection. But there is another and greater reason why no importance should be attached to Exhibit "F" in this cause. It is found in the uncontradicted testimony of Borck (R., 124):

> "Q. Previous to that why had you not obtained the title papers? Before that why had you not obtained the Torrens deeds?
>
> A. Dr. Valdez, when I made the first offer, the offer was made payable after the option was up, the first of May, and he told me that that would be too long, and

he said that that was beyond my option. I said, 'I think I can change that.' I went to Judge Ross and told him about that, that he must make me a direct offer, otherwise I could not get the documents, then he made me a second offer, which I accepted. Then I wrote my offer to Dr. Valdez, payable the 3d of March. Then I wrote another offer, payable within ten days. Then I went again to Dr. Valdez and asked him for the documents.

Q. What reason, if any, did he give for not turning over the documents when you asked for them?

A. When I came there and asked for the documents I thought I had complied with his wishes; he told me, to my surprise, that he wished to communicate with Mr. Legarda.

Q. When was this first called to your attention?

A. That was after I had made the second or third offer."

We find therefore that Valdez when approached with the offer (whether verbally or in writing does not appear) substantially the same as that in Exhibit "F" pointed out that the time for payment was too long deferred, but did not withdraw his option and received and acquiesced in the subsequent acceptance of Borck contained in Exhibits "G" and "J". It would appear that the whole controversy in this case is due to the fact that Valdez represented to Legarda that the option given Borck was subject to the approval of Legarda, whereas the record does not show that Legarda's approval was required. See exchange of cablegrams between Legarda and Valdez (R., 96, 97, 98), and answer of Valdez (R., 70). The Trial Court in making an order overruling the motion of the defendant for a new trial (R., 80), considered the objection of the defendant that Exhibit "F" had been wholly ignored and said,

"And why should it not be 'wholly ignored,' after counsel for both defendants had prevented its admission in evidence? Not only did they fail to offer it themselves but when it was offered by plaintiff, together with other exhibits, they objected and later renewed their objection

'On the ground that they are incompetent, immaterial, and irrelevant.'

Ruling on this objection was reserved until we could scrutinize each proffered exhibit (which was impracticable in the midst of the trial), and when we did so, we found that Exhibit 'F' was unsigned, and unauthenticated, and bound no one; that no finding could be based thereon, either for or against the plaintiff (because even if he had actually delivered it, no rights or liabilities could arise therefrom), and that it was consequently inadmissible. Since it had never been received in evidence, we did not consider formal exclusion necessary, but to save any further misunderstanding, we now formally sustain defendants' objections. They can not consistently complain of this, and plaintiff has not sought to.

But even if we could have considered this unsigned paper we do not think our conclusions should have been different. For if plaintiff had signed and delivered such a paper, it would have constituted neither a conditional acceptance nor a counter offer, but an independent proposal. Counsel apparently overlooks the distinction between these two classes of negotiations. At any rate, all of his authorities construe the former; they are cases where the vendee answered the offer directly but in doing so imposed other terms than those of the offer. But in the leading case relied upon by counsel, the distinction is thus drawn between such answers and a paper like Exhibit 'F.'

'The mention, in both telegram and letter, of the date and the terms of the defendant's original offer, shows that the plaintiff's order was not an independent proposal, but an answer to the defendant's offer, a qualified acceptance of that offer, varying the number of

tons, and therefore in law a rejection of the offer.' (Citing Minn. Co. vs. Columbus Co., 119 U. S., 149.)

Now, Exhibit 'F' does not purport to be anything more than 'an independent proposal'; it makes no reference to the option at all, and mentions no previous offer, but on the contrary, reads as if it were the first offer made during the negotiation. Besides, it had not been rejected when Exhibit 'G,' the final acceptance, was delivered, and in another of counsel's authorities, the Court,

'Would not say that a person might not accept an offer with qualifications upon one day, and upon the next day, and before his counter proposition is rejected, accept unconditionally.' (Citing Ortman vs. Weaver, 11 Fed. Rep., 361.)

But, the Civil Law (under which this question of substantive law would have to be decided were it actually before us upon competent evidence), seems to be less liberal to the proposer than the Anglo-American law to which alone defendant's counsel resorts. Under the Civil Law the proposer seems to have merely the right to withdraw in case of conditional acceptance or counter offer. Thus Manresa says that 'una nueva proposicion (*i. e.*, counter-offer) deja el contrato en esta de proyecto,' and we have been cited to no Civil Law authorities nor have we been able to find any which treats it as a rejection *ipso facto*. It is undisputed here that the option never was withdrawn, so that even the question of the right to withdraw is purely academic." (Citing Spanish Civil Code, Art. 1262; Manresa's Gloss. of same VIII, 589-600.)

It is reasonable therefore to conclude that Exhibit "F" is without legal effect upon this case. Testimony indicates that either it or the substance of what it contained was presented in person by Borck to Valdez, tentatively; was not received by Valdez who pointed out that it would enlarge the time for performance beyond the three months limited and when the acceptance of January 19, or the acceptance

of January 23 was presented Valdez's position was that he wished to communicate with his principal.

It is respectfully submitted therefore that an absolute, an unconditional contract was entered into between the vendor and the vendee of the land which bound both of them and fixed property rights which should be guarded by law; that the letter of acceptance by Borck should be given a reasonable construction; that a reasonable construction would be to find that his intention was to make a complete contract; that he expressed his intention in positive and absolute terms, and that the suggestions contained in the second paragraph of the acceptance are but requests for a definite understanding with regard to matters left indefinite in the contract, to wit, the details of performance.

Motion to Dismiss or Affirm.

In Rule 9 of this Court, the procedure is set out that should be followed in the event that a case is not docketed within the time allowed by the Court. This provides that if the plaintiff in error or appellant fails to comply with the rule, the defendant in error or appellee may have the case docketed and dismissed. That remedy was not availed of in this case, the record was duly filed with the clerk of this Court and the case docketed November 21, 1917, and thereafter the transcript of record was printed without a motion to docket and dismiss.

The rules of this Court are adopted with a view of facilitating the business of the Court in the interest of justice. The theory on which this particular rule is based is that the plaintiff in error or appellant by failing to comply with it has failed to duly prosecute his suit, but where it appears that the suit was duly prosecuted the reason for the rule having failed, the rule will not be applied in all of its

strictness. In the case of the Southern Pine Lumber Company vs. Ward, 208 U. S., 126, it was decided that this Court would not dismiss a cause which had not been docketed in accordance with Rule 9, because the counsel who originally forwarded the record were not attorneys of this Court, and no motion to docket and dismiss was made. There is no lack of jurisdiction of the Court. Grigsby vs. Purcell, 99 U. S., 505.

One of the judges of the Supreme Court of the Philippine Islands saw fit to extend the time for the transmission and filing of the record. We submit that under the circumstances, the exercise of his discretion should not be disturbed without good reason and then only when raised by a motion to docket and dismiss as provided by the rules of this Court, nor should the Court in deciding this matter be unmindful of the fact that conditions existing in the Philippine Islands where the common law procedure has not been long enforced may excuse a lack of exactness and nicety in the observance of rules.

Respectfully submitted,

T. T. ANSBERRY,

JOSEPH D. SULLIVAN,

Attorneys for Appellant and Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORDEN,
Appellant and Plaintiff in Error,
v.
MAURO PRIETO, BENITO LEGARDA, JR., AND BENITO VALDES, AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES,
Appellees and Defendants in Error.

No. [redacted]309

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

H. W. VAN DYKE,
Counsel for Mauro Prieto and the others named as Appellees and Defendants in error in the above-entitled case.

CHARLES C. COHN,
of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, *Appellant and Plaintiff in Error,* v. MAURO PRIETO, BENITO LEGARDA, JR., AND BENITO VALDES, AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES, *Appellees and Defendants in Error.*	No. 770

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

MOTION TO DISMISS OR AFFIRM.

Come now, by their counsel, Mauro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the estate of Benito Legarda, deceased, and Benito Valdes, named as Appellees and Defendants in Error in the above-entitled case, and move the court that both the appeal from the decision of the Supreme Court of the Philippine Islands and the writ of error in said case be dismissed, and that the citations issued as a result of said appeal and writ be quashed.

As grounds whereon they base said motion, the above-named Appellees and Defendants in Error respectfully represent that this honorable court is without jurisdiction in said case and that said appeal and writ ought to be dismissed for that and other reasons, because:

1. Although the appeal in said case was allowed on the 5th of May, 1916, and although the writ of error was allowed on the 20th of the same month, the citations thereunder were not issued until the 10th of January, 1917, nearly eight months thereafter and within, not the same term, but the next term, of this honorable court during which said appeal and writ of error were allowed.

2. Neither the appeal from the decision of the Supreme Court of the Philippine Islands, nor the writ of error allowed by a Justice of that court was made returnable, nor was either of the citations that were issued as a result of said appeal and writ made returnable, to this honorable court either within the same term or wholly within the term thereof that next ensued after the said appeal and writ of error were allowed.

3. Neither said appeal nor said writ of error was in fact returned, nor was either of said citations in fact returned, either within the term of this court during which they were allowed, or during the term of the court that next ensued thereafter.

4. No notice in writing, as required by the rules of the Supreme Court of the Philippine Islands, was given the attorneys, in that court, of the above-named Appellees and Defendants in Error with respect to the filing, on the 15th of August, 1917, of a certain request for an extension for a further period of sixty days of the time theretofore limited for the docketing of the above-entitled case in the office of the clerk of this court

5. Two extensions of the time limited for the filing of the record of said case in the office of the clerk of this court were granted, one of ninety days, the other of sixty days. In neither of these instances, as required by section 1 of rule 9 of this honorable court, was the allowance made by the Justice of the Supreme Court of the Philippine Islands who signed the citations in said case.

6. Neither of said extensions, as required by said section, was granted "by or before" the expiration of the

time last previously limited for the filing of said record with this court.

7. In further violation of said section, neither of said extensions was granted, or purports to have been granted, "for good cause shown."

And the Appellees and Defendants in Error above named further move this honorable court, by their counsel, that if the court should conclude that, notwithstanding the considerations above set forth, it has jurisdiction of said case and that said appeal and writ of error ought not to be dismissed for any of the reasons above assigned, nevertheless the judgment of the Supreme Court of the Philippine Islands and the decree entered thereon be affirmed with costs on the following ground:

Because it is manifest that the appeal in said case was taken and the writ of error therein sued out only for purposes of delay.

H. W. VAN DYKE,
Counsel for Mauro Prieto and the others named as Appellees and Defendants in Error in the above-entitled case.

WASHINGTON, D. C., *May 13, 1918.*

NOTICE OF MOTION.

WASHINGTON, D. C., *May 13, 1918.*

To Timothy T. Ansberry, Esq., Counsel for Hartford Beaumont, Assignee of W. Borck, named as Appellant and Plaintiff in Error in the above-entitled case, Washington, D. C.

DEAR SIR:

This is to notify you that I shall submit to the Supreme Court of the United States the motion of which the foregoing is a copy, with the attached statement of facts, brief of argument in support of said motion, and certificate

of the Clerk of the Supreme Court of the Philippine Islands, the Monday next occurring three weeks after service hereof, at the opening of the court, or as soon thereafter as counsel can be heard.

Respectfully,

H. W. VAN DYKE,
Counsel for Mauro Prieto and the others named as Appellees and Defendants in Error in the above-entitled case.

Service of a copy of the foregoing motion, statement of facts, brief of argument and certificate of the Clerk of the Supreme Court of the Philippine Islands, is acknowledged this 13th day of May, 1918.

T. T. ANSBERRY,
Per J. E. THOMAS,
Counsel for Appellant and Plaintiff in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK, *Appellant and Plaintiff in Error,* *v.* MAURO PRIETO, BENITO LEGARDA, JR., AND BENITO VALDES, AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES, *Appellees and Defendants in Error.*	No. 770

BRIEF

IN SUPPORT OF MOTION TO DISMISS OR AFFIRM.

STATEMENT OF FACTS.

This is an action seeking to compel specific performance of an alleged option to purchase, or contract for the conveyance of, certain real estate located in or near the City of Manila, or for damages in the alternative.

The Court of First Instance of Manila decreed that the then defendant, Benito Legarda, now deceased, should execute and deliver a conveyance to the plaintiff of the property in question, and that, if for any sufficient reason such conveyance could not be made, plaintiff should have damages in the sum of ₱73,000 ($36,500). On appeal to the Supreme Court of the Islands, the judgment of the Court of First Instance was reversed.

In accordance with the provision of section 1 of rule 9 of this honorable court, counsel for the above-named Appellees and Defendants in Error file herewith the original, and attach hereto a printed copy (omitting only the captions of the various papers), of a certificate of the Clerk of the Supreme Court of the Islands, setting forth the proceedings in the above-entitled case wherein the foregoing motion is based.

From that certificate it appears that the final judgment and the decree recorded as a result thereof by the Supreme Court of the Philippines, and of which review by this court is sought in the present proceeding, was entered on the 24th of April, 1916, during the October, 1915, term of this court; that the appeal to this court was allowed by a Justice of the Supreme Court of the Philippines (Justice Trent), on the 5th of May, 1916, and that a writ of error, which was also sued out, was allowed by the same Justice on the 20th of the same month.

It further appears that, on the 27th of November, 1916, no citations having yet been issued as a result of said appeal and writ of error, a motion by the attorneys in the court below of the above-named Appellees and Defendants in Error was submitted with a view to obtaining an order declaring said appeal and writ of error to have been abandoned and directing that the record be remanded to the trial court with directions to execute the judgment of the Supreme Court of the Islands, and that that motion was denied.

It further appears that, notwithstanding the fact that a motion of that character had been interposed, the above-named Appellant and Plaintiff in Error did not cause the citations on said appeal and writ of error to be issued until the 10th of January, 1917, nearly eight months after said appeal and writ of error had been allowed, and that, in both of said citations, the parties above named as Appellees and Defendants in Error were admonished to appear in this court one hundred and twenty days thereafter, the time permitted by rule 8 of this court.

It further appears that that period of a hundred and twenty days being about to expire without said case having yet been docketed and the record thereof filed in the office of the clerk of this court, the above-named Appellant and Plaintiff in Error filed with the court below, on the 5th day of May, 1917, a request for an extension of ninety days from the 10th day of May, 1917, of the time limited in the citations for the filing of said record in the office of the clerk of this court.

It further appears that, over the objection of the above-named Appellees and Defendants in Error, on the 17th of May, 1917, *seven days after said period of one hundred and twenty days had expired*, a Justice of the Supreme Court of the Philippines other than the one who had signed the citations in said case issued an order as follows:

"In pursuance of the practice heretofore adopted in this jurisdiction in like cases, an extension of ninety days from the 10th day of May, 1917, for the transmission and filing of the record in this case in the office of the Clerk of the Supreme Court of the United States is allowed; and the application therefor having been submitted to this court on May 5, 1917, this order is issued as of the 10th day of May, 1917, notwithstanding its actual issuance and entry this 17th day of May, 1917."

It appears that the citations in said case had been signed by Justice Trent. The order above quoted was signed by Justice Carson, acting, however, in vacation.

It further appears that in the request for said extension, a copy of which was sent to the attorneys for the above-named Appellees and Defendants in Error, not only was no good cause shown, but *no reason whatever was alleged, in support of the granting of that request.* Nor, as appears from the order just quoted, was any good cause or reason assigned therein by the Justice who issued it. He does not even state that it was in fact issued for good cause.

It appears further from said certificate of the clerk of the court below that on the 15th of August, 1917, *five*

days after the expiration of the ninety-day period of extension allowed in the above-quoted order, the above-named Appellant and Plaintiff in Error filed another request for extension, this time for a period of sixty days; that in that request also no good cause was shown or any reason whatever given why such extension should be granted; also that the allowance in this instance too was by Justice Carson and not by the Justice who signed the citations.

Further: to the certificate of the Clerk of the Supreme Court of the Islands (submitted herewith) is attached an affidavit by Mr. Charles C. Cohn, a member of the law firm of Cohn & Fisher, who appeared as attorneys for the above-named Appellees and Defendants in Error in that court.

From that affidavit it will be seen that no written notice of the latter request for extension was given Messrs. Cohn & Fisher, as required by the rules of the Supreme Court of the Philippine Islands, and that, until the 18th of September, 1917, they had no intimation whatever that said extension had been granted.

As appears from the records of the clerk of this court, the transcript of record in said case was not actually filed herein at any time during the October, 1916, term of this court—which was the term next succeeding the one during which said appeal and writ of error were allowed—but, on the contrary, was not filed until after the beginning of the present term in October, 1917.

ARGUMENT.

No more flagrant violation of the rules of this court and the practice obtaining therein could possibly have occurred in a case like the one at bar.

Rule 8, it is true, says in effect, in section 5, that citations may be made returnable in one hundred and twenty days in cases in which review is sought of decisions of the Supreme Court of the Philippines, and section 1 of rule 9 permits extension—one extension—of the time so allowed.

But, under the terms of those provisions, such extension must be granted by the Justice who signed the citation (or by a Justice of this court) and the extension must be allowed "by or before" the expiration of the return time previously limited and must be granted, if at all, "for good cause shown." In the present case *not one of these requisites was complied with.*

Neither of the two extensions that were granted was allowed by Justice Trent, the Justice who signed the citations. The first, it appears, was allowed by Justice Carson, "acting in vacation." It is not shown that Justice Trent was not in Manila or not available elsewhere at the time, but, admitting that the allowance of that particular extension by Justice Carson, instead of by Justice Trent, might have been proper in the circumstances that existed, whatever they were, the same is not true of the allowance of the second. That, like the first, was allowed, not by the Justice who signed the citations, but by Justice Carson.

And it is evident from the allowances themselves that neither extension was granted *by or before* the expiration of the time previously limited for the filing of the record in this court. *In the case of the second extension, the application therefor was not even presented within the time limited in the order granting the first.* It is dated and was presented on the 15th of August, five days after the last period of extension had expired. The attorneys for the above-named Appellees and Defendants in Error were not notified of the intention to submit it; they were not served with a copy of the order of allowance; they had no intimation of it, even, until more than a month had elapsed after it was signed. (See Mr. Cohn's affidavit.)

With respect to the requirement that good cause must be shown, it may be, of course, that on the oral presentation to Justice Carson of the first of said requests for extension, some reason was urged why the extension should be granted. If so, however, there is no record of it, either

in the typewritten transcript of the complete record that has now been filed in the clerk's office of this court or in the certificate of the clerk of the court below containing the part of the record that is submitted herewith. No cause is alleged in the formal written request for the extension; none is assigned in the order itself.

It cannot be, it seems to counsel, that the usual presumption of regularity of court orders can be held to apply in such a case. Ample time is given by the rule of this court for the preparation and transmission of records from the Philippine Islands in circumstances of an ordinary character. For good cause shown the time may be enlarged. But the provision is clear and positive to the effect that this involves a prerequisite that must be complied with.

Therefore, even assuming that the power conferred by the rule on the Justices of the court below in this regard is discretionary and consequently not subject to review—that is, that it is discretionary so far as the determination of the merits of the cause alleged is concerned—it would seem that it must at least affirmatively appear of record that *some* cause was shown that was thought to be good, and that the action of the Justice was not a mere compliance with an unsupported request.

But this does not mean that counsel for the above-named Appellees and Defendants in Error regard that grant of authority as discretionary in that or any other respect. Clearly it is not. The rule provides, not only that cause must be shown, but that the cause shown must be *good* cause, which necessarily implies that, when brought in question, the merits of such cause may be considered by this court itself. Otherwise the absurdity would result that the determination of the question as to the right of a party to proceed with the prosecution of an appeal or writ of error, in cases like the present, would lie only with an individual Justice of the court below.

In line with the view above presented, this court said in the case of *Green* v. *Elbert* (137 U. S. 615) that "to the proper conduct of the business of this court, rules are necessary, and, having been prescribed, reasonable compliance with them is expected and must be insisted upon. *When they are disregarded, dispensation from the consequences can only be extended where the circumstances furnish adequate excuse.* * * * Remedies may be found, where the plaintiff in error or appellant is entirely free from laches or want of diligence and is prevented from obtaining the transcript by fraud of the other party, the order of the court or the contumacy of the clerk" (citing cases).

But "when a return is made and the transcript seasonably deposited in the clerk's office," the court continued, "jurisdiction is not lost by the lapse of the term" (the term at which the appeal or writ of error is allowed), "but the case may still be docketed, *if the circumstances are such as to justify the court in exercising its discretion to that effect*" (citing cases). "*This we cannot be called upon to do arbitrarily.*"

If this is so, it follows that the reasons assigned as grounds for the application for extension in a case like the present—at least in a case in which the merit of the cause is brought in question, as it was in the present case—must appear in the record sent to this court. In the present case, in neither of the instances of application for extension, so far as there is any record of it, did the application take the form of anything more than a mere unsupported request. It is not shown that there was any formal motion or petition praying for the allowance, setting forth the grounds in support thereof and concluding with a verification; neither is either of the requests shown to have been supported by affidavit of any sort.

All that does appear is that Justice Carson, in the case of the first extension, granted it, not in compliance with the rule of this court, but "in pursuance of the practice

heretofore adopted in this jurisdiction in like cases," which is a reason that does not seem to be contemplated in that rule. In the second instance, not even this appears. Justice Carson's order granting the extension is endorsed on the application itself and consists of but the one word "allowed." There is nothing, therefore, to enable this court to determine whether its rule has been obeyed or not. It would seem that there ought to be something, if the rule is to be enforced.

And, as above stated, the propriety of the granting of the extension in the first of the instances referred to was in fact and formally brought in question by Messrs. Cohn & Fisher, the attorneys of the above-named Appellees and Defendants in Error, when the application was presented. On the 17th day of May, 1917, seven days after the time limited in the citations had expired, but before the application had been granted by Justice Carson, they filed a petition praying that it be denied, contending that the appeal and writ of error were already *functi officio* and fully setting forth their reasons for so contending. That petition will be found included in the certificate hereto attached.

Finally, with reference to the question as to whether the record in this case was in fact filed within the time required by the practice in this court, counsel for the above-named Appellees and Defendants in Error desire only to refer to the case of *Hewitt* v. *Filbert* (116 U. S. 145) and the case already cited of *Green* v. *Elbert* (137 U. S. 615).

From the certificate submitted herewith, it will be seen that the appeal and writ of error were allowed in May, 1916, during the October, 1915, term of this court. *The record, however, was not filed in the clerk's office of this court until October, 1917, after the beginning of the present term, within a few days of a year and a half after the appeal and writ were allowed.* Thus the October, 1916, term of the court was completely skipped.

In the former of the cases above cited (*Hewitt* v. *Filbert* 116 U. S. 145), the court, reaffirming its holding in *Castro* v. *United States* (3 Wall. 50) said that "a writ of error or the allowance of an appeal, together with a copy of the record and the citation, when a citation is required, must be returned to the next term of this court after the writ is sued out or the appeal allowed, otherwise, the writ of error or the appeal, as the case may be, will become void and the party desiring to invoke the appellate jurisdiction will be obliged to resort to a new writ of error or a new appeal."

In this connection, in *Green* v. *Elbert* (137 U. S. 615), the court said: "The transcript of record may be filed at any day during the term succeeding the taking of an appeal or the bringing of a writ of error, if the appellee or defendant in error has not in the meantime had the case docketed and dismissed; but this cannot be done after the expiration of the term, because the writ of error has become *functus officio* and the appeal has spent its force."

The present case comes clearly within the above principles. There have been laches, no explanation or excuse for which appears of record. There have been obviously dilatory tactics. There has been action without notice to the adverse parties. It is manifest that the jurisdiction of this court has been invoked only for purposes of delay.

Respectfully submitted,

H. W. VAN DYKE,
Counsel for Mauro Prieto and the others named as Appellees and Defendants in error in the above-entitled case.

CHARLES C. COHN,
of Counsel.

CERTIFICATE

THE UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands.

I, V. ALBERT, Clerk of the Supreme Court of the Philippine Islands, do hereby certify that in a certain case pending in said court, wherein HARTFORD BEAUMONT, assignee of W. BORCK, was plaintiff and appellee, and MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as administrators of the estate of BENITO LEGARDA, deceased, and BENITO VALDES, were defendants and appellants, a final judgment was rendered and a final decree entered by said court on the 24th day of April, A. D. 1916, in favor of the said MAURO PRIETO, BENITO LEGARDA, JR., and BENITO VALDES, as administrators of the estate of BENITO LEGARDA, deceased, and BENITO VALDES, and against the said HARTFORD BEAUMONT, assignee of W. BORCK, and that on the 5th day of May, A. D. 1916, said HARTFORD BEAUMONT, assignee of W. BORCK, sued out a writ of error in said Supreme Court, and took an appeal, which was allowed, directed to remove said case to the Supreme Court of the United States.

I further certify:

That on November 17, 1916, Messrs. Gilbert, Cohn & Fisher, attorneys for defendants and appellants, filed the following motion:

(Caption Omitted.)

NOTICE OF MOTION.

To HARTFORD BEAUMONT, ESQ., AND TO
MR. THOMAS D. AITKEN, *His Attorney*,

GREETING:

You are hereby notified that the defendants and appellants in the above-entitled case on Monday, Novem-

ber 27th next, at nine o'clock A. M., or as soon thereafter as counsel may be heard, will move the court for an order declaring your proposed appeal and writ of error to the Supreme Court of the United States to have been abandoned, and directing that the record of the said case be remanded to the trial court for the execution of the judgment of the Supreme Court of the Philippine Islands.

The said motion will be based upon the record of the proceedings herein, from which it appears that on March 30, 1916, judgment was rendered by the Supreme Court of the Philippine Islands reversing the decision of the lower court, and decreeing judgment for the costs of the lower court in favor of appellants; that due notice of this decision was served upon you; that on the 8th day of April, 1916, you excepted to the decision of the Supreme Court of the Philippine Islands and gave notice of intention to pray for an appeal therefrom to the Supreme Court of the United States; that on the 5th day of May, 1916, you filed notice of appeal and petition for a writ of error, which said petition was allowed on the 20th day of May, 1916, by the Hon. Grant T. Trent, one of the Associate Justices of the Supreme Court of the Philippine Islands; that no citation has been issued upon the said proposed appeal or the said proposed writ of error and that no security for costs has been given defendants and appellants.

MANILA, P. I., *November 17, 1916.*
GILBERT, COHN & FISHER,
pp (Signed) F. C. FISHER,
Attorneys for Defendants and Appellants.

Received copy this 17th day of November, 1916.
(Signed) THOS. D. AITKEN,
Attorney for Plaintiff and Appellee.

That on November 27, 1916, the Supreme Court rendered the following resolution:

"At the hearing of the motion of Messrs. Gilbert, Cohn & Fisher filed in case No. 8988, entitled, Hartford Beaumont, as assignee of W. Borck, *v.* Mauro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the estate of Benito Legarda, deceased, and Benito Valdes, praying for an order declaring the appeal and writ of error taken up by the plaintiff to the Supreme Court of the United States to have been abandoned, and directing that the record of the said case be remanded to the trial court for the execution of the judgment of the Supreme Court of the Philippine Islands. Attorney Aitken only appeared in behalf of the plaintiff and appellee. The court, after hearing his arguments, resolved that the motion of Messrs. Gilbert, Cohn & Fisher should be denied."

That on January 10, 1917, the following citations were issued and served:

CITATION.

The President of the United States to Messrs. Mauro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the estate of Benito Legarda, deceased, and Mr. Benito Valdes, Manila, P. I.

GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to an appeal duly allowed by the Supreme Court of the Philippine Islands, and filed in the clerk's office of said court on the 5th day of May, 1916, in a case wherein Hartford Beaumont, assignee of W. Borck, is plaintiff and appellee and you are defendants and appellants, to show cause, if any, why the decree rendered against said plaintiff and appellee, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10th day of January, A. D. 1917.

(Signed) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

[SEAL OF THE SUPREME COURT.]

Service of a copy of the within citation is hereby admitted this 10th day of January, 1917.

(Signed) GILBERT, COHN & FISHER,
Attorneys for the Defendants.

CITATION.

The President of the United States to Messrs. Mauro Prieto, Benito Legarda, Jr., and Benito Valdes, as administrators of the estate of Benito Legarda, deceased, and Mr. Benito Valdes, Manila, P. I.

GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, at the City of Washington, D. C., within one hundred and twenty (120) days from the date of this citation, pursuant to a writ of error duly allowed by the Supreme Court of the Philippine Islands, and filed in the clerk's office on the 20th day of May, 1916, in a case wherein Hartford Beaumont, assignee of W. Borck, is plaintiff in error and you are defendants in error, to show cause, if any, why the decree rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the Supreme Court of the United States, this 10th day of January, A. D. 1917.

(Signed) GRANT T. TRENT,
Associate Justice of the Supreme Court of the Philippine Islands.

[SEAL OF THE SUPREME COURT.]

Service of a copy of the within citation is hereby admitted, this 10th day of January, 1917.

(Signed) GILBERT, COHN & FISHER,
Attorneys for the Defendants in Error.

That on May 5, 1917, counsel for plaintiff and appellee filed the following motion for an extension for docketing the case in the office of the Clerk of the Supreme Court of the United States:

(Caption omitted.)

REQUEST FOR EXTENSION.

Now comes the plaintiff and appellee in the above-entitled case, by his undersigned attorneys, and respectfully requests that an extension of ninety (90) days from the 10th day of May, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

MANILA, P. I., *May 5, 1917.*

(Signed) HARTFORD BEAUMONT,
(Per T. D. A.).
(Signed) THOS. D. AITKEN.

Copy of this petition has been sent to Messrs. Cohn & Fisher, attorneys for the defendants and appellants.

(Signed) THOS. D. AITKEN.

That on May 17, 1917, attorneys for defendants and appellants filed the following motion praying that the plaintiff's motion for an extension for docketing the case be denied:

(Caption omitted.)

PETITION FOR DENIAL OF EXTENSION.

Now come the defendants and appellants in the above-entitled proceeding, and, in opposition to the request of the plaintiff and appellee for an extension of ninety days from May 10, 1917, for the transmission and filing of the record of the said case in the office of the Clerk of the Supreme Court of the United States, respectfully show:

That on March 30, 1916, judgment in the above-entitled case was rendered by this Supreme Court of the Philippine Islands, reversing the decision of the lower court therein, and decreeing that defendants have and recover their costs in the said lower court;

That on April 8, 1916, the plaintiff and appellee excepted to the said decision and gave notice of intention to pray for an appeal therefrom unto the Supreme Court of the United States;

That on May 5, 1916, notice of appeal and petition for a writ of error were filed in said case by said plaintiff and appellee;

That on May 20, 1916, said appeal and said writ of error were allowed by one of the Associate Justices of this honorable court;

That on January 10, 1917, at the instance and request of said plaintiff and appellee, as plaintiff in error before the Supreme Court of the United States, the defendants herein have been duly and formally cited and admonished to be and appear in said case before the Supreme Court of the United States within one hundred and twenty days from the said January 10, 1917;

That on or before said 10th day of May, 1917, and within the one hundred and twenty days aforesaid, the defendants herein have appeared before said Supreme Court of the United States in the above-entitled case pursuant to said citation and admonition aforesaid;

That the plaintiff and appellee, as appellant and plaintiff in error in the Supreme Court of the United States, has wholly failed, omitted and refused to serve due and timely citation under and in pursuance of rule 8 of the Supreme Court of the United States and of the procedure of the said Supreme Court as defined in the case of *Hewitt* v. *Filbert*, 116 U. S. 145, and cases there cited;

That the plaintiff and appellee, as appellant and plaintiff in error in the Supreme Court of the United States, has wholly failed, omitted and refused to docket the above-entitled case under and in pursuance of rule 9 of the Supreme Court of the United States and of the procedure of the said Supreme Court as defined in the numerous cases cited in Vol. 2, Encyclopedia of U. S. Supreme Court Reports, at pp. 230–231;

That the alleged appeal and writ of error of the said plaintiff and appellee are *functi officio*.

WHEREFORE, defendants and appellants respectfully pray that the request of plaintiff and appellee be wholly denied and the record in the above-entitled case be returned to the Court of First Instance of Manila for the due entry and execution of the judgment therein decreed by this honorable court.

COHN & FISHER,
pp. (Signed) CHARLES C. COHN,
Attorneys for Defendants and Appellants.

Copy received May 16, 1917.

(Signed) THOS. D. AITKEN.

That on the same date, to wit, May 17, 1917, Hon. A. C. Carson, Associate Justice, acting in vacation, issued the following order granting the motion for an extension of ninety days from the 10th day of May, 1917, for docketing the case in the office of the Clerk of the Supreme Court of the United States:

(Caption omitted.)

ORDER ALLOWING EXTENSION.

In pursuance of the practice heretofore adopted in this jurisdiction in like cases, an extension of ninety days from the 10th day of May, 1917, for the transmission and filing of the record in this case in the office of the Clerk of the Supreme Court of the United States is allowed; and the application therefor having been submitted to this court on May 5, 1917, this order is issued as of the 10th day of May, 1917, notwithstanding its actual issuance and entry this 17th day of May, 1917.

(Signed) A. C. CARSON,
Associate Justice, acting in vacation.

MANILA, P. I., *May 17, 1917.*

Service of a copy of the within order is hereby admitted, this 18th day of May, 1917.

COHN & FISHER,
(Signed) CHARLES C. COHN,
Attorneys for Defendants and Appellants.

That on August 15, 1917, Messrs. Hartford Beaumont and Thos. D. Aitken, attorneys for plaintiff and appellee, filed a motion requesting an extension of sixty days from the 10th day of August, 1917, for docketing the case in the office of the Clerk of the Supreme Court of the United States, and the same was allowed by Hon. A. C. Carson, Associate Justice of the Supreme Court of the Philippine Islands, as follows:

(Caption omitted.)

REQUEST FOR FURTHER EXTENSION.

Now comes the plaintiff and appellee in the above-entitled case, by his undersigned attorneys, and respectfully requests that an extension of sixty (60) days from

the 10th day of August, 1917, be allowed for the transmission and filing of the record of this case in the office of the Clerk of the Supreme Court of the United States.

MANILA, P. I., *August 15, 1917.*

(Signed) HARTFORD BEAUMONT,
(Signed) THOS. D. AITKEN,
Attorneys for the Plaintiff and Appellee.

ALLOWED:

(Signed) A. C. CARSON,
Associate Justice, Supreme Court, P. I.
August 15, 1917.

And that there has been no further extension of time granted than that appearing therein.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the seal of the Supreme Court of the Philippine Islands this eighteenth day of September, A. D. one thousand nine hundred and seventeen.

(Signed) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

(Caption omitted.)

AFFIDAVIT OF CHARLES C. COHN.

UNITED STATES OF AMERICA,
PHILIPPINE ISLANDS,
CITY OF MANILA- } ss.

CHARLES C. COHN, being duly sworn, deposes and says as follows:

That he is a member of the law firm of COHN & FISHER, the attorneys for the defendants and appellants in the above-entitled case.

That it appears from the record in the above-entitled case that on the 15th day of August, 1917, Messrs. Hartford Beaumont and Thos. D. Aitken, attorneys for plain-

tiff and appellee, filed a motion requesting an extension of sixty days from the 10th day of August, 1917, for docketing this case in the office of the Clerk of the Supreme Court of the United States and the same was allowed on the 15th day of August, 1917, by the Hon. A. C. Carson, Associate Justice of the Supreme Court of the Philippine Islands.

That no written notice of said motion was given as required by the rules of the Supreme Court of the Philippine Islands by the attorneys for plaintiff and appellee to the attorneys for defendants and appellants, and that the first intimation that the attorneys for the defendants and appellants had that said extension had been granted was on the 18th day of September, 1917.

(Signed) CHARLES C. COHN.

Subscribed and sworn to before me this 19th day of September, 1917. Affiant exhibited his cedula No. F-3700, issued at Manila on the 5th day of January, 1917.

(Signed) G. FORMOSO,
Notary Public.

My commission expires December 31, 1918.
Doc. No. 104.
Page No. 25.
Series of 1917.

FILED
JUN 4 1918
JAMES D. MAHER,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1917.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK,
Appellant and Plaintiff in Error,
v.
MAURO PRIETO ET AL. AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES,
Appellees and Defendants in Error.

No. ~~770~~ 309

APPEAL FROM AND IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

STATEMENT OF APPELLEES AND DEFENDANTS IN REPLY TO BRIEF FOR APPELLANT AND PLAINTIFF IN ERROR SUBMITTED IN RESPONSE TO MOTION TO DISMISS OR AFFIRM.

Because of certain inaccuracies in the statements made by counsel for the Appellant and Plaintiff in Error in their brief submitted on June 3, 1918, in reply to the brief presented on the same day in support of the motion to dismiss or affirm. Counsel for Appellees and Defendants in Error think it due to this honorable court that, for consideration with said motion, its attention should be called to the following facts:

1. On page 2 of their brief counsel for the Appellant and Plaintiff in Error state that "the appellees had a

full remedy by motion to docket and dismiss this cause, if their contention is correct. They failed to avail themselves of this remedy. * * * No motion to docket and dismiss was made by them."

In so stating, counsel for the Appellant and Plaintiff in Error, doubtless inadvertantly, have misinformed the court. A motion to docket and dismiss the above-entitled case was presented to the court on the 15th day of October of the present term by counsel for Appellees and Defendants in Error, and was denied on November 26th following. Because, however, he misunderstood information received from the clerk's office, counsel remained under the impression that decision on his motion of October 15th, was to be withheld indefinitely, and postponed his motion to dismiss or affirm until June 3rd, the last day allowed for motions.

2. Counsel for the Appellant and Plaintiff in Error also state in their brief (p. 3) that to make the present motion to dismiss or affirm, counsel for the Appellees and Defendants in Error waited until the record in the case had been printed. This statement, also, is incorrect, so far as it seeks to imply that the motion was not filed, and counsel for Appellant and Plaintiff in Error served with copy thereof, before any printed copy of the transcript of the record in the case was filed in the office of the clerk of this honorable court.

Mr. Ansberry, of counsel for the Appellant and Plaintiff in Error, was served with said motion by a deposit thereof in his office (and receipt thereof was acknowledged by his associate or employee, Mr. J. E. Thomas) on the 13th day of May, 1918, three weeks before the motion was presented. The printed copies of the record herein were not filed in the clerk's office of this court until after printed copies of said motion and brief were filed in the clerk's office.

3. Counsel for the Appellant and Plaintiff in Error also state in their brief (p. 3) that "in this case there has

been no failure to prosecute the appeal, and any technical defect which may have existed so far as appellees are concerned * * * may well be pardoned in view of the difficulties existing in the Philippine Islands in taking appeals to this court."

The accuracy of this statement is also denied, and it is suggested to the court that not one fact or circumstance appears of record to warrant any such statement. As pointed out in our brief in support of the present motion, the Appellant and Plaintiff in Error did not cause the citations on the appeal and writ of error to be issued until nearly eight months after the appeal and writ of error were allowed, two extensions of the liberal time allowed by the rule of this court were granted—and, so far as appears of record in the case, without any showing of cause—and the case was not docketed in the clerk's office of this court until NEARLY A YEAR AND A HALF HAD ELAPSED AFTER THE ALLOWANCE OF SAID WRIT OF ERROR AND APPEAL AND AFTER THE EXPIRATION OF THE NEXT SUCCEEDING TERM.

Respectfully submitted,

H. W. VAN DYKE,
Attorney for Appellees and Defendants in Error.

CHARLES C. COHN,
of Counsel.

June 4, 1918.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 303.

HARTFORD BEAUMONT, ASSIGNEE OF W. BORCK,
APPELLANT AND PLAINTIFF IN ERROR,

vs.

MAURO PRIETO, BENITO LEGARDA, JR., AND BENITO VALDES, AS ADMINISTRATORS OF THE ESTATE OF BENITO LEGARDA, DECEASED, AND BENITO VALDES,
APPELLEES AND DEFENDANTS IN ERROR.

BRIEF OF APPELLEES AND DEFENDANTS IN ERROR.

Statement of the Case.

This case comes to this court upon an appeal from and writ of error to the Supreme Court of the Philippine Islands, final decision of the latter court having been rendered March 30, 1916.

Benito Legarda, one of the defendants in this action originally, was the owner in fee of a large agricultural estate called the Nagtahan Hacienda, situated in the district of Sampaloc, near the city of Manila. Dr. Benito Valdes, co-

defendant in the original action, was the general business agent and attorney-in-fact of Benito Legarda, and held a formal power of attorney from Legarda (Record, p. 4), which had been duly filed in the office of the Registrar of Deeds at Manila. The fact of the general agency was not disputed by the defendants.

For several years prior to December 4, 1911, one W. Borck had on various occasions approached Dr. Valdes with reference to selling the Nagtahan Hacienda. These negotiations and discussions led to nothing, however, until finally, on December 4, 1911, Dr. Valdes signed the following letter at the request of Borck:

MANILA, December 4, 1911.

Mr. W. Borck, Real Estate Agent, Manila, P. I.

SIR: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda known as the Nagtahan Hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed Government valuation.

B. VALDES.

This letter appears in the record as plaintiff's Exhibit E (Record, p. 93).

Subsequently, on January 17, 1912, Borck wrote to Dr. Valdes as follows (plaintiff's Exhibit F, Record, p. 93):

W. Borck,

Real Estate Agent,

39 Plaza Cervantes.

MANILA, P. I., January 17, 1912.

Dr. Benito Valdes, 195 San Sebastian, City.

DEAR SIR: In reference to our negotiations regarding the hacienda Nagtahan at Manila, property of

Mr. Benito Legarda, consisting of about 1,993,000 sq. meters of land, I offer to purchase said property for the sum of three hundred & seven thousand (307,000.00) pesos, Ph. C., cash, net to you, payable the first day of May 1912 or before and with delivery of a torrens title free of all encumbrances as taxes and other debts.

Respectfully yours,

——— ———.

On January 19, 1912, Borck wrote to Dr. Valdes as follows (plaintiff's Exhibit G, Record, p. 94):

W. Borck,

Real Estate Agent,

39 Plaza Cervantes.

MANILA, P. I., January 19, 1912.

Dr. Benito Valdez, 195 San Sebastian, City.

SIR: I hereby advise you that I am ready to purchase the hacienda Nagtahan, situated in the districts of Sampaloc and Nagtahan, Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March 1912 provided all documents in connection with the hacienda Nagtahan, as torrens, title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.

Very truly yours,

(Sgd.) W. BORCK.

On January 23, 1912, Borck wrote to Dr. Valdes as follows (plaintiff's Exhibit J, Record, p. 94):

January 23, 1912.

Dr. Benito Valdez, 195 Calle San Sebastian, City.

SIR: I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagathan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) pesos, Ph. C., ten days after the torrens title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and those documents and papers have been found in good order.

Respectfully yours,

——— ———.

On February 28, 1912, Borck again wrote to Dr. Valdes, as follows (plaintiff's Exhibit K, Record, p. 94):

MANILA, P. I., February 28, 1912.

Dr. Benito Valdez, Attorney-in-fact for Benito Legarda, Manila.

DEAR SIR: To prevent any misunderstanding, I wish to advise you that the purchase price for the Hacienda Nagtahan is ready to be paid over to you, and I request you to notify me whenever it is convenient for you to place at my disposal for inspection the title-deed and papers in connection with said estate.

Very respectfully,

(Sgd.) W. BORCK.

The parties not being able to come to a definite agreement, and the purchase and sale not having been completed, Borck, on March 13, 1912, filed the complaint which originated this litigation, naming as defendants Benito Legarda and Benito Valdes. The complaint was amended on April 10, 1912, by adding additional allegations.

In the amended complaint the plaintiff alleged, in substance, that the defendant Benito Legarda was the owner in fee simple of the Nagtahan Hacienda, and that Benito Valdes was his attorney in fact and had acted as such on the occasions referred to in the complaint by virtue of a power of attorney duly executed and recorded; that on or about December 4, 1911, the defendant Benito Valdez gave to the plaintiff the document written and signed by him, Valdes (Record, p. 93, plaintiff's Exhibit E); that on January 19, 1912, while the offer or option mentioned still stood, the plaintiff in writing accepted the terms of said offer and requested of said Valdes to be allowed to inspect the title and other documents pertaining to the property, and offered to pay, *immediately and in cash*, as soon as a reasonable examination could be made of said property titles and other documents, the price stipulated in the contract; that the defendants had refused to deliver to plaintiff the property titles and other documents and to execute any instrument of conveyance to him; that plaintiff had thereby suffered damages in the amount of 760,000 pesos, and other expenses and losses in the amount of 80,000 pesos. The plaintiff concluded by praying: (1) that the defendant Valdes be ordered to execute the necessary formal document as proof of the contract or obligation before referred to, and to incorporate the same in a public instrument, and that the defendant Legarda be ordered to convey in absolute sale to the plaintiff, either directly or through the defendant Valdes, by a proper deed, the said Nagtahan Hacienda, described in the complaint; (2) that both defendants, and each of them, be required to render an account to the plaintiff of such rents and profits as they may have collected from the said property from the 19th of January, 1912, until the date of the execution of the judgment that may be entered in these proceedings, together with legal interest on the amounts thereof; (3) that in case it be shown that specific performance of the contract is impossible, the defendants shall pay to the plaintiff damages in the sum of 760,000 pesos; and,

finally, that the plaintiff have and recover the interests and costs in these proceedings.

Upon hearing and trial on the merits, the Court of First Instance of Manila, on February 12, 1912, rendered judgment in favor of the plaintiff. The essential points of the court's findings were that the letter of December 4, 1911, signed by Dr. Valdes, as supported by Exhibit A (the power of attorney, a copy of which accompanied the complaint), and confirmed by the letter of January 19, 1912, addressed by the plaintiff Borck to the defendant Valdes, constituted a contract, by which the principal defendant undertook to convey to the plaintiff the property therein described, and that the plaintiff had made a sufficient tender of performance of his part of the contract.

From the decree of the trial court embodying these findings and ordering specific performance, defendants appealed to the Supreme Court of the Philippine Islands. The assignments of error, including exceptions to the overruling of the several demurrers, objections on points of evidence, and several minor questions, are not material in this court nor at this time. The decision of the Supreme Court of the Philippine Islands went to the heart of the case and held that, as a matter of law, no contract had been created, under the facts proved at the trial, and the suit was ordered dismissed. From this decision, on this primary and fundamental point of the case, an appeal and a writ of error have been taken to this court. The assignments of error filed by plaintiff in error are practically confined to this single point.

ARGUMENT.

In the decision of the Supreme Court of the Philippine Islands, after stating the facts and disposing of the numerous minor assignments of error, and before taking up the primary question involved, the court referred particularly to the nature of the document on which the plaintiff relied to

establish the contract, namely, the letter of December 4, 1911, signed by Dr. Valdes. Was this letter in and of itself a binding *contract* of option, or was it a mere offer which might, if accepted, become a complete contract? The distinction between these two legal instruments or conceptions was not made clear by the trial court, and it was apparently that obscurity which partly caused its erroneous decision on the principal facts. As the decision of the Supreme Court of the Philippine Islands clearly points out (Record, pp. 178, 179), Dr. Valdes' letter of December 4, 1911, was not a *contract*—a binding option. It was an *offer*—the first half of a contract; it could only be made effective as a contract by the completion of the legal steps necessary to create any contract, namely, an acceptance exactly in accordance with the terms of the original offer. Dr. Valdes' letter of December 4, 1911, could not be considered as a legal enforcible contract of option, for the reason that it was purely gratuitous and without any consideration; no pretense was ever made, or is made, that this so-called "option" was supported by any consideration. Consequently, Dr. Valdes' said letter must be considered as an offer to sell.

These propositions are elementary, of course, but the failure to make the distinction seems to have caused difficulty in the trial court, and the bringing out of this point at the outset here enables us to come more directly and immediately to the principal point involved in this writ of error and appeal.

Dr. Valdes' letter of December 4, 1911, being a valid *offer* to sell, supported by proper authority and power of attorney given him by his principal, Benito Legardo—*was said offer accepted by the plaintiff within sufficient time and in proper manner to constitute a valid contract between the parties for the sale of the property?* This is the question at issue, recognized by the Supreme Court of the Philippine Islands, and squarely decided by it in the negative, and now brought before this court by appeal and writ of error.

We shall address ourselves to this question, the adverse

decision of which by the Supreme Court of the Philippine Islands is the substantial ground upon which plaintiff in error and appellant bases his assignments of error I, II, III, IV, V, VI, VII, XII, and XIII. His remaining assignments of error, VIII, IX, X, and XI, all refer to the consideration of and effect given by the Supreme Court of the Philippine Islands to a certain letter, "Exhibit F," placed in evidence. This latter point we shall take up and discuss in a later portion of this brief.

Subsequent to the offer made in Dr. Valdes' letter of December 4, 1911, the plaintiff, Borck, addressed four letters to Dr. Valdes (Exhibits F, G, J, and K, Record, pp. 93, 94), all dealing with the matter of the sale and purchase of the Nagtajan Hacienda, and all alleged by the plaintiff to be sufficient acceptances of Dr. Valdes' offer.

The first of these letters, that of January 17, 1912, Exhibit F, we leave to the last, as it is in connection with this letter that plaintiff in error submits his assignments of error VIII, IX, and X, which are somewhat aside from the principal question involved.

Plaintiff contends that his letter of January 19, 1912, Exhibit G (Record, p. 93), was a sufficient acceptance of Dr. Valdes' offer. Said letter reads as follows:

W. Borck,

Real Estate Agent,

39 Plaza Cervantes.

MANILA, P. I., January 19, 1919.

Dr. Benito Valdez, 195 San Sebastian, City.

SIR: I hereby advise you that I am ready to purchase the hacienda Nagtahan situated in the districts of Sampaloc and Nagtahan, Manila, and in the province of Rizal, consisting of about 1,993,000 square meters of land, property of Mr. Benito Legarda, for the sum of three hundred and seven thousand (307,-

000.00) pesos, Ph. C., the price quoted in the option given me by you.

Full payment will be made on or before the third day of March 1912 provided all documents in connection with the hacienda Nagtahan, as torrens title deed, contracts of leases and other matters be immediately placed at my disposal for inspection and if such papers have been found in good order.

Very truly yours,

(Sgd.) W. BORCK.

It will be noted that in this alleged acceptance it is stated that full payment would be made *on or before the third day of March, 1912*, etc. The letter was written January 19. Clearly this is not an unequivocal acceptance in accordance with the terms of the offer. In disposing of this point the Supreme Court of the Philippine Islands said:

> "But, aside from the fact that the complete payment of the P307,000 mentioned in the said letter was made to depend on the condition that all the documents relative to the Nagtajan Hacienda, such as the Torrens title, etc., be immediately placed at the plaintiff's disposal for his inspection, and be found satisfactory, the said tender of payment was offered to be made on or before March 3, 1912.
>
> "A simple statement of this last part of the said letter is enough to convince the mind that the plaintiff did not offer to pay, immediately and in cash to the defendant Valdes, as he alleged in his complaint, the price stipulated and agreed upon between themselves in the said document Exhibit E. Of course, it is undeniable that the plaintiff Borck had a right to examine the title deed and all the documents relative to the Nagtajan Hacienda, before the sale of the property should have been consummated by means of the execution of the proper deed of conveyance in his favor by the defendant Valdes as the attorney in fact of the other defendant Legarda, and, consequently, the plaintiff Borck was also entitled to refrain from making payment so long as he should not find the documents relative to the said property complete and

satisfactory, an indispensable condition in order that the said deed of conveyance might be executed in his favor. But at the very moment this instrument *were* executed and signed by the vendor, the payment of the stipulated price should have been paid in order to be an immediate cash payment. Pursuant to the language of that part of the document or letter Exhibit G to which we now refer in respect to the payment, it cannot be understood that the plaintiff tendered payment to the defendant immediately and in cash, for the simple reason that if the documents had been placed by the defendant at the plaintiff's disposal for his inspection, for example, on January 20th, the day following the date of the letter Exhibit G, and had the plaintiff examined them and found them satisfactory, and if the defendant Valdes had executed in the plaintiff's behalf the proper deed of conveyance or sale of the hacienda on the 25th of the same month of January, according to the exact terms of the letter of acceptance of the offer, Exhibit G, dated January 19, 1912, the plaintiff, that is, the purchaser Borek, could have made full payment to the defendant Valdes, of the P307,000, the price of the property on the 3d of March, 1912, or on any date on which the deed of conveyance was issued, from the 25th of January up to the said 3d day of March, for nothing else can be understood by, and no other meaning and scope can attach to, the words 'full payment will be made on or before the third day of March, 1912.' In short, as the said document Exhibit G is drawn up, in the part thereof relative to the offer of payment in the example above given, the purchaser Borek might pay the stipulated price of the property, or have the period from the 25th of January to the 3d of March within which to pay it, and meanwhile the ownership of the estate would already have been conveyed, through means of the proper deed, to the purchaser Borek, and he could not have been obliged to pay the said price until the very day of March 3, 1912, by reason of the contents of the said letter, Exhibit G."

Plaintiff also contends that his next letter, dated January 23, 1912, Exhibit J, was a sufficient acceptance of Dr. Valdes' offer. Said letter is as follows:

January 23, 1912.

Dr. Benito Valdez, 195 Calle San Sebastian, City.

SIR: I have the pleasure to inform you that I can improve the condition of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount of purchase price, three hundred and seven thousand (307,000.00) pesos, Ph. C., ten days after the torrens title deeds and all papers in connection with the hacienda have been placed at my disposal for inspection and those documents and papers have been found in good order.

Respectfully yours,

____ ____.

To this alleged acceptance the same objection lies as to the letter of January 19, namely, that it is not a tender of immediate and cash payment in accordance with the terms of the original offer. Upon this letter the Supreme Court of the Philippine Islands said, in its decision:

"As may be seen by the language in which the preceding letter is couched, the plaintiff virtually therein recognized that, just as he had done in the letter of January 19th, that is, the one written four days before, Exhibit G, the tender of payment to the defendant Valdes, of the price of the hacienda, could not be understood to have been a tender of 'immediate and cash' payment, as alleged in the complaint, but that payment might be made on any date prior to March 3d, or on this same date, even though he had found satisfactory all the documents that the defendant might have placed at his disposal to be examined, and, consequently, though the proper deed of conveyance of the property had been executed in his behalf. Nothing else is meant by the statement made by the plaintiff Borck to the defendant Valdes in the said letter of January 23d, Exhibit J, that he had the pleasure to inform him that he could improve the conditions of payment for the hacienda Nagtahan in so far as to agree to pay the whole amount of pur-

chase price P307,000, ten days after the torrens title deeds and all papers in connection with the hacienda had been placed at his disposal for inspection and these documents and papers had been found satisfactory, for the payment which Borck offered to make to Valdes, of the price of the property, in the said letter Exhibit J, was not indeed to be effected on the third of March or prior thereto, but within the limited period of ten days after the documents relative to the property should have been delivered to the plaintiff for his inspection and been found satisfactory. And were there any doubt that the meaning or the sense of the said offer was not such as just above stated, that doubt would be removed by a mere perusal of the statement made therein by the plaintiff telling the defendant Valdes that he, the former, had the pleasure to inform the latter that he, Borck, could improve the conditions of payment for the hacienda, to wit, those mentioned in the letter written four days before, that is, on January 19th, Exhibit G, in the manner aforementioned by paying the whole amount of the purchase price ten days after the documents had been delivered to the plaintiff and he had found them satisfactory.

"But, the said letter of January 23d, Exhibit J, is drawn up in such a way that it also does not contain any such tender of 'immediate and cash' payment by the plaintiff Borck to the defendant Valdes."

The plaintiff also presented in evidence a fourth letter from him to Dr. Valdes, dated February 28, 1912, Exhibit K, and contended that even if the two preceding letters were ineffective as acceptances, this last letter was an unqualified acceptance and offer to pay "immediately and in cash," in accordance with the allegation made in his complaint. This letter, Exhibit K, reads as follows:

MANILA, P. I., February 28, 1912.

Dr. Benito Valdez, Attorney-in-fact for Benito Legarda, Manila.

SIR: To prevent any misunderstanding, I wish to advise you that the purchase price for the Hacienda

Nagtahan is ready to be paid over to you, and I request you to notify me whenever it is convenient for you to place at my disposal for inspection the title-deed and papers in connection with said estate.

Very respectfully,

(Sgd.) W. BORCK.

Is this an unqualified acceptance, giving rise to the completed contract, as contended? The answer to plaintiff's contention is that this last letter, Exhibit K, specifically and directly relates to the letter which preceded it, dated January 23, Exhibit J, and can therefore only be considered as a supplement to or in amplification of the preceding letter. The statement that the purchase price "is ready to be paid over to you" was subordinated to the delivery requested by the plaintiff of those titles and other documents, and to the plaintiff's finding such documents satisfactory, *and the delivery of the price was also necessarily subordinate to the period of ten days, mentioned in the said letter Exhibit J.* In other words, the statement that the money "is ready to be paid over to you" was a mere statement of fact that Borck had the money in his possession; he did not propose to change the conditions of his immediately previous letter, *one of which conditions was payment within ten days.*

We quote from the decision of the Supreme Court of the Philippine Islands on this point:

> "As also may be seen by the very terms employed by the plaintiff in this letter, he virtually admits, clearly acknowledges, that in the two previous letters, Exhibits G and J, he had made this tender of payment of the price for the Nagtajan Hacienda in such a manner that it could not be understood to have been in accordance with the agreement entered into between himself and Valdes, that is, that the payment should be in cash.
>
> "The said letter Exhibit K in fact begins with these words: 'To prevent any misunderstanding,' and then says: 'I wish to advise you that the purchase price for the Hacienda Nagtahan is ready to be paid over to you, and request you to notify me

whether it is convenient for you to place at my disposal for inspection the title deed and papers in connection with said estate.'

"The first words of the letter of course indicate that the plaintiff Borck himself, in writing them, feared, at least he was not sure, that, in accepting, in the letter of January 19th, Exhibit G, the offer of the sale of the hacienda to him by Valdes, and in making therein the tender of payment and in renewing this tender in the letter, Exhibit J, of the 23d of the same month, he, the plaintiff, had not conformed to the terms of the offer of sale or of the option to buy, given to him by Valdes by means of the document Exhibit E, for in the said last letter, Exhibit K, he takes it for granted that there was or might be some misunderstanding between himself and the defendant Valdes with respect to the tender by him made of the price of the estate. According to the admission of the plaintiff Borck himself in his complaint, this price was to be paid 'at once and in cash.' In the said letter Exhibit K, to avoid that misunderstanding, the plaintiff Borck said to the defendant Valdes that the purchase price for the hacienda was ready to be paid over to him, and requested to be notified by Valdes whenever it was convenient for him to place at the plaintiff's disposal for inspection the title-deed and papers in connection with said estate.

"The notification contained in this letter written by Borck to Valdes, that the purchase price of the estate was ready to be paid over to the latter, and the mention made in this same letter, immediately after the notification, of the inspection which the plaintiff wished to make of the titles that he desired should be delivered to him for this purpose, show that this last letter, Exhibit K, relates to the one that preceded it, dated January 23, Exhibit J, or, what amounts to the same thing, is a result of it for it is virtually said therein that the price of P307,000 (which, according to his previous letter, he had agreed to pay for the hacienda, ten days after the delivery to him of the documents relative to the estate and their having been found by him to be satisfactory) was already held in readiness by the plaintiff for delivery to the defendant, but this delivery of

> the price was subordinated to the delivery requested by the plaintiff of those titles and other documents, and to the plaintiff's finding such documents satisfactory, and the delivery of the price was also subordinate to the period of the ten days, mentioned in the said letter Exhibit J. The letter Exhibit K can have no meaning whatever in that part thereof where reference is made to the offer of payment of the price of the hacienda, or to the payment itself, except in connection with the previous Exhibit J, inasmuch as the letter Exhibit K does not state when Borck was to deliver to Valdes the price which, according to this same letter, the plaintiff already had in readiness for that purpose. So that neither in the letter Exhibit K is any specific offer of payment made by the plaintiff Borck to the defendant Valdes, of the price stipulated in the document Exhibit E to be paid 'at once and in cash,' notwithstanding its being said therein that the plaintiff had the money ready to be turned over to the defendant."

In addition to the foregoing three letters written by Borck to Dr. Valdes, quoted and discussed above, there was one other letter, or rather an unsigned copy of a letter, addressed to Dr. Valdes and identified by the witness Borck as having been written by him, and introduced in evidence by the *plaintiff* (Exhibit F, Record, p. 93). The date of this letter is January 17, 1912. The trial court, upon examining the exhibits, in connection with its consideration and decision of the case, ruled it out as inadmissible on the ground that it was unsigned, unidentified, and not attested (although the record shows that the *plaintiff himself* had introduced it as one of his exhibits and *had identified it* (Record, p. 122). The Supreme Court of the Philippine Islands properly overruled the trial court, and held that Exhibit F was admissible, and had been duly proven and identified by the plaintiff himself, and should be considered in deciding the principal question. We refer to the careful and minute discussion of the Supreme Court of the Philippine Islands with reference to this Exhibit F (Record, pp. 187-191).

To the ruling of the Supreme Court on this Exhibit F plaintiff now devotes the remaining four of his assignments of error, being the only assignments aside from those devoted to the principal question at issue above referred to, that is, the question of acceptance as a proposition of contract law.

Plaintiff's assignment of error VIII reads:

> "The court erred in holding that the appellants might rely upon the alleged error of the court below in sustaining their own objection to the introduction of Exhibit F."

To this it is sufficient answer to say that the appellants, in the Supreme Court of the Philippine Islands (defendants in error here), did not object, in the trial court, to said Exhibit F on the ground on which the court ruled it out; they merely objected to all of plaintiff's exhibits, from A to M, as a whole, because they contended that such documentary evidence was immaterial and irrelevant; but the court admitted the documents and then ruled Exhibit F out of consideration on entirely different grounds. To quote again from the decision of the Supreme Court of the Philippine Islands, with respect to this contention:

> "This objection cannot be warranted by the fact that the defendants themselves opposed its admission, for the latter also opposed the admission of all the documents presented by the plaintiff, on the understanding that, as they were not bound by the documents Exhibits A and E, the one as principal and the other as agent, such documents were immaterial, incompetent and irrelevant, nevertheless the trial court admitted some of those documents and considered them for the purpose of drawing his conclusions in the judgment rendered."

Besides, the assignment of error deals with a question of local practice, the effect and sufficiency of objections to evidence and the method of preserving such objections on appeal. Upon such questions of practice and local law the decision of the Supreme Court of the Philippine Islands is

to be accepted as final. This is the general rule followed by this court, not only with respect to the decisions of State courts, but also the insular courts of Porto Rico and the Philippine Islands.

Villanueva *vs.* Villanueva, 239 U. S., 293.
Cardona *vs.* Quinones, 230 U. S., 83.

In the latter case cited, at page 88, this court said:

> "Giving effect to the settled doctrine by which we do not disturb, but on the contrary, uphold, the action of the court below as to matters concerning purely local law except upon conviction on our part of clear error committed (Nadal *vs.* May, 233 U. S., 447, 454; Villanueva *vs.* Villanueva, 239 U. S., 293, 299), we at once dismiss from view the various contentions concerning the form of the pleadings, the question whether a default should not have been allowed as to the issues presented by certain amendments of the pleadings, the admissibility as between the parties or their successors or assigns of the act under private signature either because of the asserted ambiguity of its terms or the inadequacy of the number of witnesses to its execution, and many other subjects of a kindred nature too numerous to be recapitulated."

Assignments of error IX and X are as follows:

> "IX. The court erred in holding that Exhibit F was other than the original of a letter written by plaintiff but never signed, delivered, or communicated to the defendants.
> "X. The court erred in holding that Exhibit F is a copy instead of an original."

These assignments simply challenge the finding of the Supreme Court of the Philippine Islands as to the fact. We submit that the finding of the court is fully borne out by the record of the trial, showing that the plaintiff, Borck, introduced this letter, Exhibit F, and himself identified it as having been sent by him to Dr. Valdes (Record, pp. 93, 122).

We also quote from the decision of the Supreme Court as follows (Record, p. 190):

> "It is hardly necessary now to show that the said letter of January 17, 1912 (Exhibit F), was Borck's acceptance of the option or offer of sale made to him by the defendant Valdes in his letter of December 4, 1911 (Exhibit E), for the plaintiff Borck himself admitted in his testimony at the trial that the letter Exhibit F was his acceptance of the said option."

Assignment of error XI is as follows:

> "The court erred in holding that the acceptance attempted by the original plaintiff in Exhibit F was not subsequently wholly abandoned, and the acceptance therein set forth had not been completely substituted by a later and valid act."

The court did not hold that this Exhibit F stood alone and rendered nugatory the subsequent alleged acceptances written by Borck. The court's holding was that Exhibit F was properly in evidence and should be considered along with the other exhibits. The court took into consideration all the four letters which Borck addressed to Dr. Valdes. There is no merit in the assignment of error, because it is inaccurate in stating what the Supreme Court of the Philippine Islands did in fact hold.

Summarizing, we find that plaintiff in error has submitted thirteen assignments of error. Four of them deal with Exhibit F, which we have immediately hereinbefore referred to. All of the remainder deal with what we term the principal question at issue, to wit, the correctness of the decision of the Supreme Court of the Philippine Islands on the point whether plaintiff had, by any of his four letters addressed to Dr. Valdes, legally accepted Dr. Valdes' offer of December 4, 1911.

Upon this proposition the Supreme Court of the Philippine Islands decided squarely that no legal acceptance had been made by any of the plaintiff's four letters attempting accept-

ance, nor by all of them considered as a whole. The Supreme Court, in its opinion, which is quite lengthy and elaborately written, carefully considers and with admirable logic and minuteness disposes of each exhibit and letter, and so reaches its final conclusion that no completed contract ever arose out of the transactions referred to. We have heretofore in this brief examined these various letters and exhibits, also quoting in each instance from the opinion of the Supreme Court.

In summarizing its discussion and analysis of these exhibits, the Supreme Court said:

> "Duly considering the documents Exhibits F, G, J and K, that is, the statements made by the plaintiff Borck in the letters of January 17, 19 and 23, 1912, and February 28th of the same year, addressed by him to the defendant Valdes, in accepting the option that this latter had granted him for the purchase of the Nagtajan Hacienda, or the offer of sale of the said hacienda defendant made to the plaintiff, with respect to the payment of the price thereof, it is seen that in the said documents the plaintiff Borck offered to pay to the defendant Valdes the said price, first within the period of five months from December 4, 1911, afterwards within the term of three months from the same date of December 4th, and, finally, within a period which could as well be ten days as twenty or thirty or more days from the time Valdes should put at the plaintiff's disposal, to be inspected, the titles and other documents relative to the said hacienda, and the plaintiff should find them satisfactory and the proper deed of conveyance should, in consequence thereof, be executed in his behalf by Valdes; and this evidently is an offer of payment in installments, and not an 'immediate and cash' payment."
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> * * * * * * *
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> "The letter of December 4, 1911, Exhibit E, contained, as aforesaid, an offer of sale or a proposal of sale on the part of the defendant Valdez to the plaintiff Borck, of the Nagtajan Hacienda, for the assessed valuation of the same, effective during the period of three months counting from the said date.

> Such proposal or offer was an expression of the will only of the defendant Valdes, manifested to the plaintiff Borck. In order that such a proposal might have the force of a contract, it was necessary that the plaintiff Borck's will should have been expressed in harmony with all the terms of the said proposal."

The court then cites authorities in support of the various propositions necessarily involved in its conclusions, among others that an acceptance in order to be operative must be unequivocal, unconditional, and without variance of any sort, citing *Eliason vs. Henshaw*, 4 Wheaton, 225.

Again quoting from the opinion of the Supreme Court:

> "As already seen while we were considering the documents Exhibits F, G, J and K, the plaintiff Borck accepted the offer of sale made to him or the option of purchase given him in document exhibit E by the defendant Valdes, of the Nagtajan Hacienda, for the assessed valuation of the same, but his acceptance was not in accordance with the condition with regard to the payment of the price of the property under which the offer or the said option was made for, while this payment was to be paid in cash, as the plaintiff Borck himself admitted and the defendant Valdes positively stated in his testimony, and also as provided by law, for the reason that the time was not fixed in the said offer or oprion when the payment should be made, in the aforesaid four documents Exhibits F, G, J and K the plaintiff Borck made the offer to pay the said price, in the first of them, within the period of five months from December 4, 1911; in the second, within the period of three months from the same date, and, finally, in the other two documents, within an indefinite period which could as well be ten days as twenty or thirty or more, counting from the date when the muniments of title relative to the said hacienda should have been placed at his disposal to be inspected and he should have found them satisfactory and, in consequence thereof, the deed of conveyance should have been executed in his favor by the defendant Valdes. So that there was no concurrence of

the offer and the acceptance as to one of the conditions related to the cause of the contract, to wit, the form in which the payment should be made. The expression of Borck's will was not in accordance with all the terms of Valdes' proposal, or, what amounts to the same thing, the latter's promise was not accepted by the former in the specific terms in which it was made, and finally, the acceptance of the said proposal on Borck's part was not unequivocal and without variance of any sort between it and the proposal, because, in view of the terms in which the payment was offered by Borck in his said letters of January 17, 19 and 23, Exhibits F, G, J and K, there was variance from the moment in which according to said terms, in the first two letters, the payment of the price should be made on or before the 1st of May and on or before the 3d of March, 1912, respectively, that is, within a period limited in those letters, and the offer of payment was equivocal inasmuch as, by the last two letters it was made to depend on certain acts as a basis for fixing the period in which the said payment should have to be made; finally, there was no mutual conformity between the person who made the proposal or offer, Valdes, and the person who accepted it, Borck, in the same sense with respect to the form of payment, and Borck altered from the terms of the proposition with regard to the form of payment and the record does not show that Valdes assented to such variance.

"It is, therefore, evident that, in accordance with the provision of law and the principles laid down in the decisions above cited, the proposal or offer of sale made by the defendant Valdes to the plaintiff Borck, or the option of purchase granted by the former to the latter, with respect to the Nagtajan Hacienda, in the document Exhibit E, was not converted into a perfect and binding contract for them, and that as Valdes did not assent to the modification introduced by Borck in the offer of sale made by this defendant in regard to one of its terms, to wit, the said form of payment, the said offer became null and void, and, consequently, Borck has no right to demand of the defendant Valdes and of this letter's principal, the other defendant, Legarda, or of the administrators

> of the estate left by Legarda at his death which occurred during the course of these proceedings, whose names appear at the beginning of this decision, the fulfilment of that offer, nor, therefore, any indemnity whatever for such nonfulfilment."

This is a suit between parties in the Philippine Islands involving solely questions of local law, that is questions of elementary contract law as interpreted and applied by the Supreme Court of the Philippine Islands. It involves no Federal question, no infringement of a Federal or constitutional right. We submit that this case is, therefore, within the rule stated in *Villanueva vs. Villanueva*, 239 U. S., 293, and *Cardona vs. Quinones*, 240 U. S., 38, in the first of which cases this court said:

> "It is apparent that all the errors relied upon, whether embraced in the assignments or pressed in the argument, considered in their essence only dispute the correctness of the facts found by both the courts below and but challenge the accuracy of the principles of the local law which were applied to the facts for the purpose of deciding the cause. Under these circumstances, without noticing more in detail either the assignments or the arguments supporting them, we content ourselves with saying that we are of the opinion after examining and weighing them all, that they are without merit for the following reasons: (*a*) Because in so far as they dispute the concurrent findings of fact of both the courts below they entirely fail to give rise to that conviction of clear error which must be entertained in order to authorize a reversal of the findings, *Texas & Pacific Ry. vs. Louisiana R. R. Commission*, 232 U. S., 338; *Gilson vs. United States*, 234 U. S., 380, 383-384; and (*b*) Because in so far as they challenge the correctness of the application which the court made of the local law to the facts in deciding the cause, they are totally deficient in that persuasive strength which it is essential they should possess in order to produce the conviction that clear error was committed by the court below, and thus lead us to depart from the principle by which we follow and sustain the local law as ap-

plied by the court below unless we are constrained to the contrary by a sense of clear error committed. *Ker vs. Couden,* 223 U. S., 268, 279; *Santa Fe Ry. vs. Friday,* 232 U. S., 694, 700; *Nadal vs. May,* 233 U. S., 447."

Motion to Dismiss.

We also call the attention of the court to the motion to dismiss, filed herein on behalf of the defendant in error, the consideration of which the court subsequently announced would be deferred until the hearing on the merits. We adhere to the grounds stated in said motion, and respectfully submit that this appeal and writ of error should be dismissed.

We also respectfully submit that the decision of the Supreme Court of the Philippine Islands, upon the merits of the case, is correct and should be affirmed.

ALEX. BRITTON,
EVANS BROWNE,
Attorneys for Appellees and Defendants in Error.

BEAUMONT, ASSIGNEE OF BORCK, *v.* PRIETO ET AL., ADMINISTRATORS OF LEGARDA, ET AL.

APPEAL FROM AND ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

No. 303. Argued April 17, 1919.—Decided May 5, 1919.

In the interest of justice the court may decline to dismiss a case upon the ground that the writ of error and citation were not made returnable in time, where the irregularity had color of authority from the court below and one of its judges. P. 555.

An offer to sell real property, in the form of an option allowing three months in which to buy at a certain price, is not accepted by an offer to purchase at that price, conditioned to be paid on a date specified (beyond the three months) or "before and with delivery" of clear title. *Id.*

The opportunity to accept a continuing offer is lost by making a counter offer. P. 556.

The court will not disturb a decision of the Supreme Court of the Philippines on a local question of contract, unless clearly wrong. *Id.*

Affirmed.

THE case is stated in the opinion.

Mr. Joseph D. Sullivan, with whom *Mr. T. T. Ansberry* and *Mr. Thos. D. Aitken* were on the brief, for appellant and plaintiff in error.

Mr. Alex. Britton, with whom *Mr. Evans Browne*, *Mr. H. W. Van Dyke* and *Mr. Charles C. Cohn* were on the briefs, for appellees and defendants in error.

MR. JUSTICE HOLMES delivered the opinion of the court.

This is a suit for the specific performance of an alleged contract to sell land. The court of first instance made a

decree for the plaintiff, but the decree was reversed by the Supreme Court of the Philippine Islands and the defendants were absolved from the complaint. There is a motion to dismiss, on the ground that the writ of error and citation were not made returnable in time. But without going into particulars, as the appellant had color of authority from the court and a judge of that court, it appears to us that justice will be better served by dealing with the merits of the case. See *Southern Pine Co.* v. *Ward*, 208 U. S. 126, 137.

On the merits the only question is whether the alleged contract was made. The first material step was the following offer, dated December 4, 1911: "Mr. W. Borck, Real Estate Agent, Manila, P. I. Sir: In compliance with your request I herewith give you an option for three months to buy the property of Mr. Benito Legarda, known as the Nagtahan hacienda, situated in the district of Sampaloc, Manila, and consisting of about 1,993,000 square meters of land, for the price of its assessed government valuation. B. Valdes." There is no dispute that the assessed government valuation was 307,000 pesos, that Legarda owned the land and that Valdes had power to make the offer. On January 17, 1912, Borck wrote to Valdes: "In reference to our negotiations regarding" the property in question, "I offer to purchase said property for the sum of three hundred and seven thousand (307,000.00) pesos, Ph. C., cash, net to you, payable the first day of May, 1912, or before and with delivery of a torrens title free of all encumbrances as taxes and other debts." There was dispute about the admissibility of this letter and its being signed, but we see no occasion to disturb the opinion of the Supreme Court that it was a part of the transaction and was admissible. No answer was received, and on January 19 Borck wrote again, saying that he was ready to purchase the property at the price and that full payment would be made on or before

March 3, provided all documents in connection with the hacienda were immediately placed at his disposal and found in good order. On January 23, Borck wrote again that he could improve the condition of payment and would pay ten days after the documents had been put at his disposal for inspection, &c., and finally, on February 28, wrote that the price was ready to be paid over and requesting notice when it was convenient to allow inspection of all papers. Before this last letter was written Valdes had indicated that he regarded compliance as an open question by saying in conversation that he wished to communicate with Mr. Legarda. Subsequently conveyance was refused.

The letter of January 17 plainly departed from the terms of the offer as to the time of payment and was, as it was expressed to be, a counter offer. In the language of a similar English case, "plaintiff made an offer of his own . . . and he thereby rejected the offer previously made by the defendant. . . . It was not afterwards competent for him to revive the proposal of the defendant, by tendering an acceptance of it." *Hyde* v. *Wrench*, 3 Beavan, 334. Langdell, Cont., § 18. We do not find it necessary to go into the discussion of the later communications, which led the Supreme Court to the conclusion that they also would not have been sufficient. The right to hold the defendant to the proposed terms by a word of assent was gone, and after that all that the plaintiff could do was to make an offer in his turn. It would need a very much stronger case than this to induce us to reverse the decision of the court below. *Cardona* v. *Quiñones*, 240 U. S. 83, 88.

Judgment affirmed.